

v. 3021

No. 15391

**United States
Court of Appeals
For the Ninth Circuit**

BENJAMIN B. HOFFMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

**Appeal from the United States District Court for the
District of Arizona**

FILED

MAR 12 1957

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Attorneys for Appellee.

In the United States District Court
for the District of Arizona

No. C-13,999—Phx.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BENJAMIN B. HOFFMAN,

Defendant.

INDICTMENT

Violation: 18 U.S.C.A. 1341 and 1343
(Mail Fraud; Fraud by Interstate Wire)

The Grand Jury Charges:

Count I.

(18 U.S.C.A. 1343)

On or about the 29th day of May, 1953, Benjamin B. Hoffman, hereinafter called the defendant, devised a scheme to obtain money and property by means of false and fraudulent pretenses, representations and promises; that the scheme so devised was substantially as follows: The defendant used the names of two companies, the Hoffman Wholesale Grocery and the Acme Distributing Company, to place orders, outside the State and District of Arizona, on open account with various persons, firms and companies, dealing in food and food products, and in placing the said orders, the defendant represented that the Hoffman Wholesale Grocery or the Acme Distributing Company was

an active and responsible business concern, within the State of Arizona, with good credit rating and that the goods ordered would be paid for promptly in full; that the aforesaid representations and promises were made to induce the persons, firms, and companies receiving them to ship their merchandise to the defendant on credit; that the defendant well knew at the time the aforesaid representations and promises were made that the Hoffman Wholesale Grocery and the Acme Distributing Company were, in fact, not active and responsible business concerns in the State of Arizona, and not possessed of a good credit rating, but in truth and in fact, said companies were dummy business organizations with only nominal assets and created by the defendant to accomplish his scheme; and that the defendant further knew that the goods ordered and shipped to the Hoffman Wholesale Grocery and the Acme Distributing Company would not be paid for promptly in full, and the defendant did not intend to pay for said food and food products received, except to make token payments to induce the sellers thereof to further rely on the false representations and promises previously made; that as a further part of said scheme, the defendant converted said food and food products immediately into cash by selling the same, keeping the proceeds for his own use and benefit.

On or about the 23rd day of November, 1954, in the District of Arizona, the defendant, Benjamin B. Hoffman, for the purpose of executing the afore-

said scheme and artifice did, by interstate wire, telephone Long's Date Gardens in Pasadena, California, and place an order for food products, viz., dates, to be delivered to the Acme Distributing Company, Tempe, Arizona, and in furtherance of said scheme did make the fraudulent representations and promises as aforesaid.

Count II.

(18 U.S.C.A. 1343)

The Grand Jury realleges all of the allegations of the first count of this indictment, except those contained in the last paragraph thereof.

On or about the 11th day of October, 1954, in the District of Arizona, the defendant, Benjamin B. Hoffman, for the purpose of executing the aforesaid scheme and artifice did, by interstate wire, telephone C. A. Glass Company in Los Angeles, California, and place an order for food products, viz., dates, to be delivered to the Acme Distributing Company, Tempe, Arizona, and in furtherance of said scheme did make the fraudulent representations and promises as aforesaid.

Count III.

(18 U.S.C.A. 1341)

The Grand Jury realleges all of the allegations of the first count of this indictment, except those contained in the last paragraph thereof.

On or about the 13th day of December, 1954, in the District of Arizona, the defendant, Benjamin B. Hoffman, for the purpose of executing the afore-

said scheme and artifice, placed or caused to be placed in an authorized depository for mail matter at Phoenix, Arizona, to be sent and to be delivered by the Postal Establishment of the United States, a certain writing enclosed in a postpaid envelope addressed to Long's Date Gardens, 2600 Foothill Boulevard, Pasadena, California, to wit, cashier's check No. 27792, issued by the Valley National Bank, Phoenix, Arizona, December 12, 1954, payable to the order of Long's Date Gardens in the amount of \$500.

Count IV.

(18 U.S.C.A. 1343)

The Grand Jury realleges all of the allegations of the first count of this indictment, except those contained in the last paragraph thereof.

On or about the 14th day of June, 1954, in the District of Arizona, the defendant, Benjamin B. Hoffman, for the purpose of executing the aforesaid scheme and artifice did, by interstate wire, telephone Grant-Whitman Company, Spokane, Washington, and place an order for food products, viz., canned salmon, to be delivered to the Acme Distributing Company, Tempe, Arizona, and in furtherance of said scheme did make the fraudulent representations and promises as aforesaid.

Count V.

(18 U.S.C.A. 1343)

The Grand Jury realleges all of the allegations of the first count of this indictment, except those contained in the last paragraph thereof.

On or about the 22nd day of May, 1954, in the District of Arizona, the defendant, Benjamin B. Hoffman, for the purpose of executing the aforesaid scheme and artifice did, by interstate wire, telephone Shurtz Produce Company, Hutchinson, Kansas, and place an order for food products, viz., dressed poultry, to be delivered to the Acme Distributing Company, Tempe, Arizona, and in furtherance of said scheme did make the fraudulent representations and promises as aforesaid.

Count VI.

(18 U.S.C.A. 1343)

The Grand Jury realleges all of the allegations of the first count of this indictment, except those contained in the last paragraph thereof.

On or about the 10th day of May, 1954, in the District of Arizona, the defendant, Benjamin B. Hoffman, for the purpose of executing the aforesaid scheme and artifice did, by interstate wire, telephone Poletti Sausage Company in San Francisco, California, and place an order for food products, viz., sausage, to be delivered to the Acme Distributing Company, Tempe, Arizona, and in furtherance of said scheme did make the fraudulent representations and promises as aforesaid.

Count VII.

(18 U.S.C.A. 1343)

The Grand Jury realleges all of the allegations of the first count of this indictment, except those contained in the last paragraph thereof.

On or about the 31st day of August, 1953, in the District of Arizona, the defendant, Benjamin B. Hoffman, for the purpose of executing the aforesaid scheme and artifice did, by interstate wire, telephone R. O. Kelley Cannery at Midville, Georgia, and place an order for food products, viz., canned peas, to be delivered to the Hoffman Wholesale Grocery, Tucson, Arizona, and in furtherance of said scheme did make the fraudulent representations and promises as aforesaid.

Count VIII.

(18 U.S.C.A. 1341)

The Grand Jury realleges all of the allegations of the first count of this indictment, except those contained in the last paragraph thereof.

On or about the 24th day of August, 1953, in the District of Arizona, the defendant, Benjamin B. Hoffman, for the purpose of executing the aforesaid scheme and artifice, placed or caused to be placed in an authorized depository for mail matter at Tucson, Arizona, to be sent and to be delivered by the Postal Establishment of the United States, a certain writing enclosed in a postpaid envelope addressed to the R. O. Kelley Cannery, P. O. Box 175, Midville, Georgia, to wit, a request for samples, and promising further contact with a view to placing an order for merchandise.

Count IX.

(18 U.S.C.A. 1341)

The Grand Jury realleges all of the allegations of the first count of this indictment, except those contained in the last paragraph thereof.

On or about the 13th day of August, 1953, in the District of Arizona, the defendant, Benjamin B. Hoffman, for the purpose of executing the afore-said scheme and artifice, placed or caused to be placed in an authorized depository for mail matter at Tucson, Arizona, to be sent and to be delivered by the Postal Establishment of the United States, a certain writing enclosed in a postpaid envelope addressed to Hayward's Special Products Company, Hohen Solms, Louisiana, to wit, a confirmation of an order for merchandise placed via long distance telephone.

Count X.

(18 U.S.C.A. 1343)

The Grand Jury realleges all of the allegations of the first count of this indictment, except those contained in the last paragraph thereof.

On or about the 13th day of August, 1954, in the District of Arizona, the defendant, Benjamin B. Hoffman, for the purpose of executing the afore-said scheme and artifice did, by interstate wire, telephone Hayward's Special Products Company, Hohen Solms, Louisiana, and place an order for food products, viz., fruit preserves, to be delivered to the Hoffman Wholesale Grocery, Tucson. Ari-

zona, and in furtherance of said scheme did make the fraudulent representations and promises as aforesaid.

Count XI.

(18 U.S.C.A. 1343)

The Grand Jury realleges all of the allegations of the first count of this indictment, except those contained in the last paragraph thereof.

On or about the 29th day of May, 1953, in the District of Arizona, the defendant, Benjamin B. Hoffman, for the purpose of executing the aforesaid scheme and artifice did, by interstate wire, telephone T. L. Brice Company, Sherman, Texas, and place an order for food products, viz., pickles, to be delivered to the Hoffman Wholesale Grocery, Tucson, Arizona, and in furtherance of said scheme did make the fraudulent representations and promises as aforesaid.

A True Bill.

/s/ [Indistinguishable],

Foreman.

/s/ JACK D. H. HAYS,

United States Attorney.

[Endorsed]: Filed October 26, 1955.

[Title of District Court and Cause.]

MOTION TO DISMISS AND
NOTICE OF MOTION

Motion to Dismiss

The defendant moves to dismiss the indictment and each Count thereof on the ground that each Count is fatally defective in that it does not state facts sufficient to constitute an offense against the United States.

LOUIS B. WHITNEY,
LORETTA WHITNEY,
PAUL W. LA PRADE;

By /s/ LOUIS B. WHITNEY,
Attorneys for Defendant.

Notice of Motion

To: United States of America, Plaintiff, and Jack
D. H. Hays, Esq., United States Attorney,
Plaintiff's Attorney:

Please Take Notice that upon the indictment herein in the above-entitled and numbered cause, and upon the Points and Authorities herewith served upon you, the undersigned will move this Court on and at the next regular Law and Motion Calendar of this Court, in the United States Court House, Phoenix, Arizona, at 10:00 o'clock a.m., in the forenoon of said day, or as soon thereafter as counsel can be heard, for an order dismissing the indictment and each Count thereof.

Dated November 21st, 1955.

LOUIS B. WHITNEY,
LORETTA WHITNEY,
PAUL W. LA PRADE;

By /s/ LOUIS B. WHITNEY,
Attorneys for Defendant.

Service of copy acknowledged.

[Endorsed]: Filed November 21, 1955.

[Title of District Court and Cause.]

MINUTE ENTRY OF MONDAY, NOV. 28, 1955
Honorable Dave W. Ling, United States District
Judge, Presiding.

This case is now called for arraignment and for hearing on Motion to Dismiss. The defendant is present in person with his counsel, Louis B. Whitney, Esq. On motion of William A. Holohan, Esq., Assistant United States Attorney,

It Is Ordered that the Government is allowed 5 days to file memorandum in opposition to Motion to Dismiss and that said motion be set for hearing December 5, 1955, at 10:00 o'clock a.m. The defendant is now arraigned. The defendant waives the reading of the indictment and a copy thereof is given to him and he is called upon to plead. The defendant's plea is not guilty, which plea is entered.

It Is Ordered that this case is passed for trial setting and that the defendant is allowed 10 days after ruling on motion to dismiss to move for Bill of Particulars.

[Title of District Court and Cause.]

MINUTE ENTRY OF FRIDAY, DEC. 30, 1955

Honorable Dave W. Ling, United States District Judge, Presiding.

It Is Ordered that Defendant's Motion to Dismiss the Indictment and each count thereof is denied.

[Title of District Court and Cause.]

BILL OF PARTICULARS

Comes Now the United States of America, by Jack D. H. Hays, United States Attorney for the District of Arizona, and pursuant to the position taken in its Memorandum in Opposition to defendant's Motion for a Bill of Particulars, provides the following information:

The following tabulation includes the name and address of each person, firm and company included in the phrase persons, firms and companies as used in line 17 and line 20 of the first count of the indictment and the corresponding lines of each count thereafter. Included also are the food and food products ordered by the defendant and the names

of the persons who received the telephonic communications from the defendant.

Company

Couroy Coffee,
1328 McGee,
Kansas City, Missouri

Item: Coffee

Person phoned: Ralph Clark

Hayward's Special Products,
P. O. Box 2,
Hohen Solms, Louisiana

Item: Preserves

Person phoned: W. C. Hayward, Sr.

Forest H. Johnson Company,
711 Second Avenue,
Seattle, Washington

Item: Canned Sea Food

Person phoned: Edi A. Olund

T. L. Brice Company,
Sherman, Texas

Item: Pickles

Person phoned: Ted S. Brice

River Rest Farms,
Shawnee, Oklahoma

Item: Turkeys

Person phoned: Ray Ferguson

Company

Duncan Coffee Company,
Houston, Texas

Item: Coffee

Persons phoned: Ben Ball and John H.
Duncan

Stewart's Animal Food Co.,
2618 Sprague,
Spokane, Washington

Item: Dog Food

Person phoned: E. G. Stewart

Gavin Bros.,
Coleman Building,
Seattle, Washington, and
Grant-Whitman Company,
41 East Gray,
Spokane, Washington

Items: Canned Salmon and Crabmeat

Person phoned: Jack Ehlinger

Long Date Gardens,
2600 East Foothill,
Pasadena, California

Item: Dates

Person phoned: Mrs. Lola M. Darling

Shurtz Produce Company,
Box 135,
Hutchinson, Kansas

Item: Poultry

Person phoned: H. B. Shurtz

Company

C. A. Glass Company,
701 East 7th,
Los Angeles, California

Item: Dates

Person phoned: John L. Glass

R. O. Kelley Cannery,
P. O. Box 175,
Midville, Georgia

Item: Peas

Person phoned: R. O. Kelley

Poletti Sausage Company,
428 Pacific,
San Francisco, California

Item: Meat Products (Sausage)

Person phoned: John Poletti

Booth Fisheries,
309 West Jackson Blvd.,
Chicago, Illinois

Item: Shrimp

Person phoned: Jack Harding

/s/ JACK D. H. HAYS,
United States Attorney.

[Endorsed]: Filed February 20, 1956.

[Title of District Court and Cause.]

MINUTE ENTRY OF FRIDAY, SEPT. 21, 1956

Honorable Dave W. Ling, United States District
Judge, Presiding.

The Government rests.

At 11:35 o'clock a.m., the jury is admonished and excused until 1:30 o'clock p.m.

At the close of the Government's case, Paul La Prade, Esq., counsel for the defendant, moves for judgment of acquittal on each and every count of the indictment and states his grounds therefor.

It Is Ordered that said Motion for Judgment of Acquittal is denied.

At 11:45 o'clock a.m., It Is Ordered that the further trial of this case is continued to 1:30 o'clock p.m.

Subsequently, at 1:30 o'clock p.m., the jury, the defendant and counsel are all present pursuant to recess and further proceedings of trial are had as follows:

The defendant rests.

The jury is admonished by the court and excluded from the court room.

At the close of all the evidence, Louis B. Whitney, Esq., counsel for the defendant, moves to dismiss the indictment and states his grounds therefor, and it is ordered that said motion to dismiss is denied.

Said counsel for the defendant moves for judgment of acquittal on each and every count of the indictment and states his grounds therefor, and it is ordered that said motion for judgment of acquittal is denied.

[Title of District Court and Cause.]

VERDICT

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the defendant, Benjamin B. Hoffman, guilty as charged in count 1; guilty as charged in count 2; guilty as charged in count 3; guilty as charged in count 4; guilty as charged in count 5; guilty as charged in count 7; guilty as charged in count 8; guilty as charged in count 9; guilty as charged in count 10; guilty as charged in count 11.

/s/ JAMES R. CARTER,
Foreman.

[Endorsed]: Filed September 24, 1956.

[Title of District Court and Cause.]

MOTION IN ARREST OF JUDGMENT

Defendant moves the Court to arrest the judgment for the following reasons:

1. The indictment does not state facts sufficient to constitute an offense against the United States,

in particular, the indictment does not allege that the scheme to defraud was a continuing scheme up to and including the dates that the phone calls and letters were alleged to have been placed or mailed.

WHITNEY & LA PRADE;

By /s/ LOUIS B. WHITNEY,
Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed October 5, 1956.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

The defendant moves the Court to grant him a new trial for the following reasons:

1. The Court erred in denying defendant's motion for acquittal made at the conclusion of the evidence.

2. The verdict is contrary to the weight of the evidence.

3. The verdict is not supported by substantial evidence.

4. The Court erred in admitting testimony of the following witnesses, to which proper objections were duly made:

Lola M. Darling

Mr. Pritchett

T. S. Bryce
Herman Crede
Rulan Goodman
John E. Doyle
R. O. Kelly
T. J. Gavin
Jack Ehlinger
W. C. Hayward
H. B. Shurtz
John L. Glass

WHITNEY & LA PRADE;

By /s/ LOUIS B. WHITNEY,
Attorneys for Defendant.

MOTION IN SUPPORT OF MOTION FOR NEW TRIAL

There is no substantial evidence to support the verdict in this case for the reasons that the evidence is lacking that the defendant made the representations charged in each and every count of the indictment (excluding Count VI, which was dismissed), because there was no testimony that the defendant represented that he had a good credit rating and that the goods ordered would be paid for promptly in full, or that the Acme Distributing Company or the Hoffman Wholesale Grocery Company "was an active and responsible business concern." If the representations were not made as charged in the indictment, then there is no evidence to support the scheme.

As to the mail counts, i.e., Counts I, III, VIII and IX, the representations do not appear in any of the correspondence mailed by Hoffman.

With reference to the other counts concerning the telephone calls, each of those counts is followed by the wording, "and in furtherance of said scheme did make the fraudulent representations and promises as aforesaid." This means to us that on each telephone conversation the defendant must have made the "fraudulent representations and promises as aforesaid," or there is an entire failure of proof. This last quotation on the telephone counts the writer does not remember seeing in any other indictment, i.e., in that part of the indictment stating the gist of the offense.

We respectfully submit that for the reasons given a new trial should be granted, or in the alternative, our motion for judgment of acquittal on the mail counts and on the wire counts should be granted.

Respectfully,

WHITNEY & LA PRADE;

By /s/ LOUIS B. WHITNEY,

Attorneys for Defendant.

[Endorsed]: Filed October 5, 1956.

[Title of District Court and Cause.]

MINUTE ENTRY OF MONDAY, OCT. 8, 1956

Honorable Dave W. Ling, United States District Judge, Presiding.

This case comes on regularly for sentence this day. William Eubank, Esq., Assistant United States Attorney, is present for the Government. The defendant is present in person with his counsel, Louis B. Whitney, Esq., and submits Motion in Arrest of Judgment, and

It Is Ordered that Motion in Arrest of Judgment is denied.

Defendant's Motion for New Trial is argued by counsel.

It Is Ordered that said Motion for New Trial is denied.

The defendant is now afforded an opportunity to make a statement in his own behalf and to present any information in mitigation of punishment. Thereupon, the court finds that no legal cause appears why judgment should not now be imposed and renders judgment as follows:

In the United States District Court
for the District of Arizona

No. C-13,999—Phoenix

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BENJAMIN B. HOFFMAN,

Defendant.

JUDGMENT AND COMMITMENT

On this 8th day of October, 1956, at Phoenix, Arizona, came the attorney for the Government, and the defendant appeared in person and by counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of violating Title 18, Section 1341, United States Code (using mails to promote fraud), as charged in Counts 3, 8 and 9 of the indictment, and Title 18, Section 1343, United States Code (fraud by interstate wire), as charged in Counts 1, 2, 4, 5, 7, 10 and 11 of the indictment.

The Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or

his authorized representative for imprisonment for a period of five (5) years on each of said Counts 1, 2, 3, 4, 5, 7, 8, 9, 10 and 11, these sentences to run concurrently.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ DAVE W. LING,
United States District Judge.

[Endorsed]: Filed and docketed October 8, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Benjamin B. Hoffman, Phoenix, Arizona.

Names and address of appellant's attorneys: Louis B. Whitney and Paul W. La Prade, 810 Luhrs Tower, Phoenix, Arizona.

Offense: Mail fraud; fraud by interstate wire—violation of 18 U.S.C.A. 1341 and 1343.

Concise statement of judgment or order, giving date, and any sentence: Five (5) years on each of ten (10) counts to run concurrently; date of sentence, October 8, 1956.

Name of institution where now confined, if not on bail: In custody of the Attorney General of the United States; do not know name of institution.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment dated October 8, 1956.

Dated: October 18, 1956.

/s/ LOUIS B. WHITNEY,
Attorney for Appellant;

/s/ PAUL W. LA PRADE,
Attorney for Appellant.

[Endorsed]: Filed October 18, 1956.

In the United States District Court
for the District of Arizona

No. C-13,999

UNITED STATES OF AMERICA,
Plaintiff,

vs.

BENJAMIN B. HOFFMAN,
Defendant.

Present:

JACK D. H. HAYS,
U. S. District Attorney, by
WILLIAM E. EUBANK,
Appeared on Behalf of the Plaintiff.

LOUIS B. WHITNEY and
PAUL W. LA PRADE
Appeared on Behalf of Defendant.

Proceedings

September 18, 1956—10 A.M.

The Clerk: Case Number C-13,999, United States of America, Plaintiff, versus Benjamin B. Hoffman, Defendant, for trial.

Mr. Eubank: Plaintiff is ready, your Honor.

Mr. Whitney: Defendant is ready.

The Court: Call the names of 28 jurors. As your names are called, come forward, please.

(Thereupon the Jury was duly impaneled and sworn to try the issues of the case.)

Mr. Whitney: If your Honor please, I would like to have the witnesses put under the Rule.

Mr. Eubank: Your Honor, some of our witnesses are not to arrive until tomorrow morning.

The Court: All right, you will watch to see that your witnesses remain out of the courtroom. Call up now whoever is present.

(Witnesses present were sworn and excluded from courtroom.)

The Court: All witnesses will be required to remain out of the courtroom during the course of the trial.

Mr. Eubank: Your Honor, I request that Mr. Tyer, postal inspector, be allowed to remain.

The Court: All right.

Mr. Eubank: And also Mr. Lyn Bedford of the F.B.I.

The Court: All right. [2*]

Do you want to make an opening statement?

Mr. Eubank: Yes.

The Court: You may proceed.

Mr. Eubank: May it please the Court, Ladies and Gentlemen of the Jury:

Probably the one thing Mr. Whitney and I will agree upon today is that this case will not be proved in the newspapers, but in this room. It is our duty to prove it beyond a reasonable doubt. If we don't prove it that way, he should not be convicted.

We have in the Indictment eleven counts against Mr. Ben B. Hoffman. He is charged with a violation of two laws, a synthesis of which I would like to read now, just to solidify the two points we are going after here. Both of these laws are under the general section called Mail Fraud.

The first one is Title 18 of the United States Code, Section 1341, and it is entitled also Frauds and Swindles.

“Whoever, having devised * * * any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises * * * for the purpose of executing such scheme or artifice or attempting so to do, placed in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office [3] Department * * * shall be fined * * *”

And then the penalty. That is 1341, dealing with placing anything in the mails having to do with the

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

furtherance of this scheme or artifice to defraud.

Now, Title 18, United States Code, 1343, is also under this general category, Mail Fraud, and it is entitled Fraud by Wire, Radio, or Television. It has to do with interstate wire. Generally, it reads as follows:

“Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of interstate wire, radio or television communication * * * for the purpose of executing such scheme or artifice, shall be fined * * *”

There are two main elements we are going to have to prove probably today and tomorrow, and one of those elements is the fact that the mails and the telephone were used to further this scheme to defraud. The other element would be that there was a scheme in Mr. Ben B. Hoffman's own mind, because if there was no scheme, obviously, he can't be guilty of this thing.

The scheme is subjective. We can't take out his brain and hold it up, so we are going to prove that he was [4] guilty of contemplating this scheme by circumstantial evidence.

We intend to show that Ben B. Hoffman maintained two front companies at three locations. He maintained a front company at Tempe, and one at Mesa. He maintained a front company at Tucson.

The name of the front companies at Tempe and Mesa was The Acme Distributing Company. The

front company at Tucson was Ben B. Hoffman Wholesale Grocers.

We will produce witnesses to show that these offices had a few pieces of furniture in them, but were not the vigorous type of office that you would expect a person dealing in this type of high finance, a person dealing with wholesale grocers all around the United States.

We will show that by the use of the mails, and mainly by the use of telephone communication, and quite often collect telephone communication, that Mr. Hoffman would approach these people, never personally, but always long distance, collect telephone, or by letter. That when he would make this contact, that he knew a great deal about the particular business that these people were in, that because of his knowledge and the fact that he knew other people in the field, that they extended credit in the usual terms of business. That no payments were made in the great amount of instances. There were several payments made of very small amounts on total bills. [5]

We expect to use that to prove that these were lulling attempts, and by lulling attempts we mean where a bill has accumulated, and no further merchandise will be shipped unless payment has been made that a small amount of money was paid on the bill, so that further shipments would be made, and that the shipments that did follow what we call the lulling attempt were actually much greater in value than the amount of money that was paid on the account.

Now, we will attempt to prove, or we will prove that these shipments were made into the Phoenix area, and that they were picked up usually by Mr. Hoffman, that in several instances they were sold within a few days after the shipment was received, and that when that shipment was sold that the shipment was sold for a lesser amount than the amount of the invoice and the amount that our people contracted with him.

In other words, we will show that he took this merchandise when he got it in his possession, and almost immediately took it out and disposed of it for prices less than it would have cost him if he were on the level as a business man.

The problem of a case like this is that we have to resurrect this stage play. We are going to parade many actors over that witness stand. They are the only means, they, testifying directly to their sensory impressions are the only [6] means that we have to recreate the scenes and the incidents that happened.

Consequently, in a case of this type there is an element of disorganization, for the very reason that there are so many small pieces of circumstantial evidence to come in.

I think you will find it interesting, though, to attempt in your own mind, with the preliminary remarks I have made here this morning, to attempt to see where these cogs fit in. When I have completely presented my case, and the defendant has completely presented his case, we will give you closing argument, at which time I will attempt to draw this multitude of testimony together, so that

it shall actually paint for you a full picture, just like a puzzle, and all these pieces supposedly will be in place.

Thank you.

The Court: Do you want to make a statement at this time?

Mr. Whitney: Yes, your Honor.

The Court: All right.

Mr. Whitney: If the Court pleases, Ladies and Gentlemen of the Jury:

The United States attorney made a statement as to what he intends to prove, at least what he says he is going to attempt to prove.

He did not read the part of the Indictment [7] setting forth the so-called scheme to defraud.

Count I of the Indictment sets forth the alleged scheme. That is carried forward in each of the other ten counts to this indictment, some of which are based on alleged telephone conversations, and some of which are based upon alleged use of the mails, with the purpose of executing the fraud, the fraud charged here.

The Indictment, in Count I, insofar as the alleged scheme is concerned, says:

“On or about the 29th day of May, 1953, Benjamin B. Hoffman, hereinafter called the defendant, devised a scheme to obtain money and property by means of false and fraudulent pretenses, representations and promises; that the scheme so devised was substantially as follows: The defendant used the names of two companies, the Hoffman Wholesale Grocery and the Acme Distributing Company,

to place orders outside the State and District of Arizona, on open account with various persons, firms and companies, dealing in food and food products, and in placing the said orders the defendant represented that the Hoffman Wholesale Grocery or the Acme Distributing Company was an active and responsible business concern, within the State of Arizona, with good credit rating and that the goods ordered would be paid for promptly in full; that the aforesaid representations [8] and promises were made to induce the persons, firms, and companies receiving them to ship their merchandise to the defendant on credit; that the defendant well knew at the time the aforesaid representations and promises were made that the Hoffman Wholesale Grocery and the Acme Distributing Company were, in fact, not active and responsible business concerns in the State of Arizona, and not possessed of a good credit rating, but in truth and in fact said companies were dummy business organizations with only nominal assets and created by the defendant to accomplish his scheme; and that the defendant further knew that the goods ordered and shipped to the Hoffman Wholesale Grocery and the Acme Distributing Company would not be paid for promptly in full, and the defendant did not intend to pay for said food and food products received, except to make token payments to induce the sellers thereof to further rely on the false representations and promises previously made;”——

Now, as I understand, on that score Mr. Eubank

said he was going to attempt to prove that they made these token payments to lull these people into selling them other merchandise, which they did. I want you to be very careful to see that that happened.

“——that as a further part of said scheme, the defendant converted said food and food products immediately into [9] cash by selling the same, keeping the proceeds for his own use and benefit.”

Then states what is known as the gist of the offense, which is the telephone conversation, or the mailing of the letters, as the case may be.

This crime is divided into two parts. One without the other is not sufficient. In the first instance, they must prove the scheme to defraud substantially as laid in the indictment. If they prove that scheme and they do not prove anything else, no crime has been committed.

But they have got to further prove that in furtherance of said scheme that he either mailed the letter charged in the indictment, or made the telephone call as charged in the indictment. If they fail to prove the scheme and they prove the other part without the scheme, the court will probably instruct you no crime was committed.

In other words, there are two elements to this, the scheme to defraud, and the mailing of the letter and the telephone call. This is what the lawyers call the gist of the offense, that is, the offense itself, after you have proved the scheme, is the telephoning; the scheme itself is the telephoning, but there must be a scheme upon which they base the main

telephone conversation, and we ask that you watch the testimony carefully to see that it is proven as laid down in the indictment, and as stated by Mr. Eubank. [10]

Thank you.

The Court: We will have our morning recess at this time. During the recess, you are not to discuss the case among yourselves, nor permit anyone to discuss it with you. You will also avoid forming or expressing any opinion upon any subject connected with it.

The court will stand at recess for ten minutes.

(A short recess was had.)

The Court: Call your first witness.

Mr. Eubank: I call Mrs. Lola M. Long.

LOLA M. LONG DARLING

called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Mrs. Lola M. Long?

A. That is my business name. My married name is Darling now.

Mr. Whitney: At this time, for the purpose of the record, defendant objects to any evidence being introduced under the Indictment in this case, mainly upon the ground that the Indictment states the scheme was devised on the 29th of May, 1953. It doesn't state that it continues to the filing of the

(Testimony of Lola M. Long Darling.)

indictment, or to any date whatsoever. For that reason, [11] I think it fails to state a public offense.

The Court: Very well. Objection overruled. Go ahead.

Q. (By Mr. Eubank): Your real name, or your present real name is Lola M. Darling?

A. Yes.

Q. And your business name is Lola M. Long?

A. Yes.

Q. You are the owner and operator of Long's Date Gardens?

A. Yes.

Q. That is located in Pasadena, California?

A. Yes.

Q. How long have you been in that business, Mrs. Darling?

A. About ten years.

Q. Could you tell the Jury why you also use the name of L. M. Long?

A. That was my married name until I married in April of 1954, so I just carried on Long as my business name.

Q. I want to take you back to a telephone call——

Do you recall the name of Acme Distributing Company of Tempe?

A. As making the call?

Q. No, do you recall the name?

A. Yes.

Q. How do you recall that name? [12]

A. Well, through the envelope that they sent me with the check in.

Mr. Whitney: Pardon me, I didn't get that answer.

(Testimony of Lola M. Long Darling.)

The Witness: By the name of the—from the envelope with the check that they sent me.

Q. (By Mr. Eubank): What was the check sent to you for, or in relation to what?

Mr. Whitney: If the Court please, I object. It isn't the best evidence. No foundation laid for that.

The Court: All right. That is true.

Q. (By Mr. Eubank): Prior to receiving an envelope with the name of Acme Distributing Company, had you had any dealings with Acme Distributing Company before that time? A. No.

Q. If I understand your testimony correctly, you received a letter before you ever received any telephone call?

A. No, the telephone call was the first.

Q. In relation to a telephone call, can you establish the date, or approximate date on which you received a telephone call?

A. I would say it would be three or four days before the shipment that was sent to Acme Distributing Company, which was about November 24th, I believe. [13]

Q. Do you have any records, or are there any records, business records that would help you identify the exact date?

A. Well, the bills of lading and the invoices that I kept.

Q. All right. In relation to the first telephone call, would you please describe that to the jury?

Mr. Whitney: If the Court please, I object to

(Testimony of Lola M. Long Darling.)

that on the grounds no foundation has been laid for that. They have got to identify the caller.

The Court: They can't do it all at once, Mr. Whitney. Go ahead.

Mr. Whitney: I realize that, but they made——

The Court: All right. Objection overruled. You made your objection.

Q. (By Mr. Eubank): The first telephone call, would you please tell the name of the person, or the way they identified themselves?

A. They identified themselves as Acme Distributing Company of 818 Apache, either boulevard or street, in Tempe, Arizona.

Mr. Eubank: At this time I would like to have this marked for identification.

The Clerk: Government's Exhibit 1 for identification.

(Said Telephone toll bill was marked as Government's Exhibit 1 for identification.) [14]

Q. (By Mr. Eubank): I show you Government's Exhibit 1 for identification and ask you if you recognize that document? A. Yes.

Q. What is the document?

A. It is the toll charges for the telephone bills.

Q. How do you recognize it?

A. From my check mark and my writing.

Q. Is this your writing? A. Yes.

Mr. Eubank: At this time I would like to offer Government's Exhibit 1 for identification in evidence.

(Testimony of Lola M. Long Darling.)

Mr. Whitney: If the Court please, we object to this on the grounds no proper foundation being laid for admission. It is purely hearsay and not the best evidence.

The Court: It may be received.

(Said Telephone toll bill was received in evidence and marked as Government's Exhibit 1.)

Q. (By Mr. Eubank): I show you Government's Exhibit 1 in evidence and ask you if you can describe, or approximate from this statement the date of the first phone call?

A. Well, it must have been about four days before that.

Q. How can you approximate or identify the approximate time? I mean, by looking at that bill? [15]

A. Well, it would take that long to get the merchandise out that he ordered.

Q. Would you describe this first call? Was it a straight telephone call, or was it a Collect call?

A. No, the first was just he called.

Q. It was a straight call? A. Yes.

Q. Then was there another call?

A. Yes. Then he called.

Q. How did he call that time?

A. Well, that Collect call.

Q. A Collect call? A. Yes.

Q. And approximately how many days before the Collect call did he make the first call?

(Testimony of Lola M. Long Darling.)

A. I would say it would have to be at least three or four days.

Q. Now, I show you Government's Exhibit 1 and ask you by looking at this document how you identify the approximate date of the first call? In other words, something on this sheet must indicate to you that you received a call that was Collect?

A. It must have been around the 20th of November.

Q. How did you come at that approximate date?

A. Well, if we sent the fruit the 24th, it would probably [16] at least take that much time to get it ready and out. And this call, if I remember correctly, was wanting to know when the fruit would be sent.

Q. As far as you recall, is this the second call from him?

A. I would say it is. The first one was not Collect.

Q. Now, this particular document, how did you receive it?

A. It come with this telephone bill.

Q. And in your business, Mrs. Long, records of this type, how do you keep them?

A. Well, they are just entered as the cost, you know, whatever the toll telephone bill is, as far as records, except keeping those little individual slips from where the calls are made from.

Q. In your business, do you preserve this type of information? A. Yes.

Q. And this one is from your records?

(Testimony of Lola M. Long Darling.)

A. Yes.

Q. Now, you have testified that approximately three or four days before this Collect call—by the way, would you read this Collect call off to the jury so that they will know when the Collect call was?

A. The Collect call was made November 26th.

Q. From where? [17] A. Tempe.

Q. How much was the charge to you?

A. \$1.10.

Q. Now, back to the first telephone call that was approximately four days before this one. What was the voice of the caller? Was it a male, or female, or child? A. I would say it was a male.

Q. Do you recall generally the conversation, or the questions asked you by this voice?

Mr. Whitney: Just yes or no on that.

Q. (By Mr. Eubank): Do you recall the conversation? A. Yes, I recall it.

Q. What did the person ask?

Mr. Whitney: If the Court please, I object to it on the grounds that no foundation has been laid for it. This is a different situation than if a man has an established phone.

The Court: If they don't prove their case I will direct a verdict.

Mr. Whitney: Thank you.

The Court: So don't interrupt just the minute a question is asked.

Q. (By Mr. Eubank): What did this individual say that called you? [18]

A. The party that called, that identified me as

(Testimony of Lola M. Long Darling.)

Mrs. Long, they asked me if I had any dates to sell, of which I told him I did. And then they told me the amount they would want, and we agreed on a price, just by telephone only.

Q. Do you recall the amount that they wanted, approximately?

A. I think the first order he wanted 600 boxes of three and five-pound sizes.

Q. And what was the price you quoted him?

A. I quoted 45 cents a pound F.O.B. Pasadena.

Q. What were the terms for the payment?

A. Well, it was just my understanding that ten days or net thirty, the way all of our other bills are paid.

Q. Did you discuss that over the telephone?

A. Not that I recall, but just from the talk on the telephone, and everything, I just took it for granted that——

Q. Did he seem to know—well, state whether or not he appeared to you to know about this type of business?

A. Well, it sounded to me like he did.

Q. Is it the usual course, or is it your usual course to grant credit to persons that call over the telephone in that manner?

A. We have, yes, but not on such a large scale I didn't before.

Q. What was the factor that in this case caused you to grant credit of this amount? [19]

A. Well, it was just his conversation, I would say.

(Testimony of Lola M. Long Darling.)

Q. What element of that conversation?

A. It seemed like he had evidently known of the company, it sounded to me like, for a period of time.

Q. Did he seem to know someone in your family?

A. I don't know. He just said "Mrs. Long," mostly.

Mr. Whitney: I object. This is a little leading.

The Court: Yes, it is.

Q. (By Mr. Eubank): Can you establish the date from your office records that you made the various shipments to the Acme Distributing Company?

A. Yes, I have the bills of lading that was marked by the Watson Trucking Company when they picked them up from our dock.

Q. In the course of your business, will you tell us these records that you keep and how you keep them? For example, now, let us take the bill of lading. Who fixes those up, who writes them up?

A. Well, I usually took care of them, but if there was an emergency, the boy I had working for me helped me out.

Q. How many copies of the bill of lading are there?

A. Oh, there must be about ten, I would say.

Q. And how many copies do you keep for your records?

A. I send them the original invoice and number three [20] copy of the bill of lading.

Q. How many do you keep for your records?

A. I just keep one.

Q. You keep one?

(Testimony of Lola M. Long Darling.)

A. Of the bill of lading.

Mr. Eubank: I would like these bills of lading marked as Exhibit 2, and each of the pages as 2A, B, C, etc.

The Clerk: Government's Exhibit No. 2, and 2-A to 2-M, inclusive, for identification.

(Said Bills of Lading marked as Government's Exhibits 2, and 2-A to 2-M, inclusive, for identification.)

Q. (By Mr. Eubank): I show you Plaintiff's Exhibit 2, 2-A through 2-M, for identification, and ask you to look at each one of these, and ask you if you have seen those before? A. Yes.

Q. How do you recognize that?

A. This appears to be the signature of the fellow that worked for me, and then the others are my signature.

Q. And are these made at or about the time of the shipment?

A. The day the shipment went out.

Mr. Eubank: I ask that these bills of lading be admitted in evidence.

Mr. Whitney: As one exhibit? [21]

Mr. Eubank: Actually as part of two, all being the bills of lading.

Mr. Whitney: I object to it as immaterial and not binding on the defendant.

The Court: It may be received.

The Clerk: Government's Exhibit 2 and 2-A to 2-M, inclusive, in evidence.

(Testimony of Lola M. Long Darling.)

(Said documents were received in evidence and marked as Government's Exhibits 2, 2-A to 2-M, inclusive.)

Q. (By Mr. Eubank): I show you Plaintiff's Exhibit in evidence 2, 2-A through 2-M, inclusive, and ask you what these documents represent?

A. Well, it is for the amount of merchandise that was sent each day.

Q. Sent to whom?

A. Acme Distributing Company.

Q. And do these bills of lading here include all of the shipments that you made to Acme Distributing Company? A. Yes.

Q. Now, do the amounts written on these bills of lading include the amount of dates that you shipped? A. Yes.

Q. All of them are covered by the bill of lading, are they? [22] A. Yes.

Q. Now, you have testified that your business is in Pasadena, California. Where were these goods shipped from and to where?

A. Well, they was shipped by Watson Trucking Brothers, which they specified me to ship by, from our loading dock in Pasadena, to Tempe, Arizona.

Q. All right. Now, in regards to the first telephone call, now, the original telephone call, was there any specification by the Acme Distributing Company over the lines to ship, shippers to use?

A. Yes, they definitely stated Watson Brothers.

Q. And is that the reason that all of those bills

(Testimony of Lola M. Long Darling.)

of lading are so marked, signed? A. Yes.

Q. With regard to the telephone bill here, this is Government's Exhibit 1, was this bill paid by you?

A. Yes.

Q. And what particular phone was this charge charged to?

Mr. Whitney: I object to it as immaterial.

The Court: I don't see what difference it makes. She paid it.

Mr. Eubank: We intend, your Honor, to connect up the venue problem by several of these types of things.

The Court: I don't understand what you mean, the [23] venue problem.

Mr. Eubank: One of our elements, of course, is to prove the venue in the state of Arizona, of the scheme.

The Court: The call was to California, she testified. It was interstate. I don't know what else you need.

Mr. Eubank: I will ask that this be marked as Government's Exhibit No. 3, and also that each of the items be marked 3-A and 3-B.

The Clerk: Government's Exhibits 3, 3-A and 3-B for identification.

(Said Invoices were marked as Government's Exhibits 3, 3-A and 3-B for identification, respectively.)

Q. (By Mr. Eubank): I show you Govern-

(Testimony of Lola M. Long Darling.)

ment's Exhibits 3, 3-A and 3-B for identification, and ask you if you recognize those documents?

A. Yes.

Q. What are these documents?

A. Well, this is the invoices, see. I sent each one individual. This is for——

Mr. Whitney: No.

Mr. Eubank: Just what the documents are.

The Witness: It is the invoices for the amount of fruit that we sent them.

Q. (By Mr. Eubank): These invoices, when are they arrived at, as far as [24] your company is concerned? When did you make these up?

A. I tried to make them each day for that, but at the end of the week, so I could send them out the bills, see. But when they weren't paid, then I sent it for the whole month.

Q. When these invoices are made, where are they filed in your company?

A. Well, under my Unpaid Accounts Receivable.

Q. What kind of a file do you have for that? Is that under the name of the individual or company?

A. Under the individual name, Acme.

Q. And these are under what name?

A. Acme Distributing.

Mr. Whitney: You offer them?

Mr. Eubank: If you would like to look at them. And then I offer them in evidence.

Mr. Whitney: You offer them now?

Mr. Eubank: Yes.

(Testimony of Lola M. Long Darling.)

Mr. Whitney: May I ask the lady a question on voir dire, your Honor?

The Court: All right.

Q. (By Mr. Whitney): Miss Witness, these apparently are copies of some documents, are they not?

A. That is right.

Q. What? [25] A. That is right.

Q. And you keep books of account in your business? A. Yes.

Q. You have a bookkeeper? A. Yes.

Q. And who made these out? The bookkeeper?

A. No, I made those myself.

Q. And you made them out from what? The books?

A. From the bill of lading and the invoice. That is the total for the three, you know, for the month of November, when the bill was not paid.

Q. Some might have been made out from the invoices?

A. They were taken from the original invoices on that sheet.

Q. But they are reflected in your books of account, are they?

A. These, yes. I have all those.

Mr. Whitney: I object to them as being hearsay against the defendant. No foundation is laid. The books are not produced. The books are the best evidence.

The Court: Were the documents kept in the regular order of your business?

The Witness: Yes.

(Testimony of Lola M. Long Darling.)

The Court: Was it the regular order of business to keep such records? [26]

The Witness: I don't understand.

The Court: That was your practice, to keep such records?

The Witness: Yes.

The Court: All right, they may be received.

(Said invoices were received in evidence and marked as Government's Exhibits 3, 3-A and 3-B, respectively.)

Q. (By Mr. Eubank): I show you Government's Exhibits 3, 3-A and 3-B in evidence, and now ask you what these documents contain? What are the amounts specified on them?

A. You mean the totals?

Q. What do they represent?

A. Well, for the amount of cartons of dates that were shipped to Acme Distributing, the number of boxes, and how many to a box.

Q. Now, the originals of these invoices were sent to whom?

A. The original, Acme should have had.

Q. Now, would you please total the amounts for these? Do each of these dates represent a shipment?

A. That is right.

Q. And these totals here represent a grand total for those shipments that you have listed?

A. That is right. [27]

Q. Can you tell the jury the amount of dates that you have shipped, represented by each of those

(Testimony of Lola M. Long Darling.)

three documents? A. In dollars or pounds?

Q. In dollars.

A. Well, the total was \$17,225.00.

Q. All right, now, what was that based on. That figure is based upon how much a pound?

A. At the rate of 45 cents a pound, which was agreed by telephone by Acme.

Q. Now, did you receive any payment on this bill? A. Yes; I got one \$500 check.

Mr. Eubank: May this be marked Government's Exhibit 4 for identification?

(Said envelope was marked as Government's Exhibit 4 for identification?)

Q. (By Mr. Eubank): I show you Government's Exhibit 4 for identification and ask you if you recognize this envelope?

A. Yes; that is definitely the one that was sent to me.

Mr. Whitney: You offer this in evidence?

Mr. Eubank: Yes; I will.

Mr. Whitney: If the court please, it is incomplete. It is just an envelope. Until they lay the proper foundation or get the rest of this, we object.

The Court: I don't know anything about it. I haven't [28] the least notion what it is about. She identified this?

Mr. Eubank: She has identified it.

The Court: All right. I don't know what the purpose of it is.

(Testimony of Lola M. Long Darling.)

Mr. Eubank: This envelope——

The Court: Is that the one the check was sent in?

Mr. Eubank: Yes, your Honor.

The Court: All right, it may be received.

(Said envelope was received in evidence and marked as Government's Exhibit 4.)

Q. (By Mr. Eubank): Mrs. Darling, I show you Government's Exhibit 4 and ask you to describe the envelope, namely, the place it was sent from?

The Court: That speaks for itself.

The Witness: It has Acme Distributing——

The Court: Don't waste time with that. The exhibit speaks for itself.

Mr. Eubank: All right.

The Court: The jury can read that.

Mr. Eubank: Your Honor, at this time I have a request to make. We have the original check subpoenaed from the Valley National Bank, the original cashier's check. I would like to at this time withdraw Mrs. Long, with the Court's consent. [29]

The Court: Put on the witness from the bank and have her stand aside for a minute. Is that what you want?

Mr. Eubank: Yes.

The Court: All right, it may be done. Stand aside, please. Where is your witness from the bank?

Mr. Eubank: Mrs. Alta Foster.

ALTA FOSTER

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Will you state your name, please?

A. Mrs. Alta Foster.

Q. And you are the assistant manager of the
Valley National Bank, Willetta and First Street
office?

A. That is right.

Q. And that is here in Phoenix, Arizona?

A. That is right.

Q. And you are here under a subpoena duces
tecum in which you were asked to bring a certain
cashier's check No. 27792 with you?

A. That is right, sir.

Q. Do you have that check with you?

A. I do. [30]

Q. Would you please explain to the Jury the
Valley National Bank procedure in handling cash-
ier's checks when they are sold, and when they are
returned through the ordinary course of business?

A. Yes, sir. When a cashier's check is bought,
we pay to the order of——

Mr. Whitney: Wait a minute. What is in the
check?

The Witness: I am sorry, Mr. Whitney.

Mr. Whitney: I object to stating what is in the
check, it speaks for itself.

The Court: She wasn't testifying what was in
the check. Go ahead on the procedure when one is

(Testimony of Alta Foster.)

purchased.

The Witness (Continued): The name of who the check is bought for is in the Pay to the Order of, and up in the corner we have "For," and that is the name of the purchaser or person buying it, or what they are paying for. When the check is brought back to the bank it is cancelled as Paid, and filed numerically in our files, and they are kept forever.

Mr. Eubank: I would like this check to be marked as Plaintiff's Exhibit 5.

The Clerk: Government's Exhibit 5 for identification.

(Said Cashier's Check was marked as Government's Exhibit 5 for identification.)

Q. (By Mr. Eubank): Now, I show you Plaintiff's Exhibit 5 for [31] identification and ask you if you recognize that check? A. Yes, I do.

Q. Is that the one you brought with you this morning? A. That is right.

Q. Is that one that was kept in the regular course of your bank's business?

A. That is right.

Mr. Whitney: Are you offering that now?

Mr. Eubank: Yes.

Mr. Whitney: I don't think there is any foundation laid.

The Court: I agree. You had better recall your other witness.

Mr. Eubank: Your Honor, we have a photostatic

(Testimony of Alta Foster.)

copy of this check, and the bank wants the original.

The Court: All right, if it is received in evidence I will let you withdraw it.

Mr. Eubank: All right, sir.

The Court: It hasn't been received yet.

Mr. Eubank: Would you step down?

The Court: Are you going to recall the witness?

Mr. Whitney: We have no objection to substitution.

Mr. Eubank: All right, but she will want to take this check with her.

The Court: Oh, she wants to take it back? [32]

Mr. Eubank: Yes.

The Court: Sit down there and we will see you get it back.

(Witness excused.)

LOLA LONG DARLING

resumed the stand and testified as follows:

Direct Examination

(Continued)

By Mr. Eubank:

Q Mrs. Darling, I show you Government's Exhibit 5 for identification, and ask you if you recognize this check? A. Yes, that is the one.

Q. And is this the check that you received in the envelope that you identified a few moments ago?

(Testimony of Lola Long Darling.)

A. That is right, that's all that was in it.

Q. Did you inscribe anything upon the check any place?

A. Not that I recall, only just the stamp on the back.

Q. Just this? A. Yes.

Q. Is this your company's stamp?

A. That is right.

Mr. Eubank: The photostatic copy, your Honor, doesn't have the stamp of the Pay to the Order of Long Dates.

The Court: Well, you better have one made.

Mr. Eubank: And can the back part be put in evidence at that time? [33]

The Court: I don't know what you mean. It bears Mrs. Long's endorsement, or at least the endorsement of the company, doesn't it?

Mr. Eubank: That is right.

The Court: Your photostat doesn't show that?

Mr. Eubank: That is right.

The Court: Well, you have the one that does. Have another photostat made of the back of that check and then you will be all right. You have the front of it in your hand now?

Mr. Eubank: That is right. Can we have that done conditionally, I mean, if we put this in evidence now?

The Court: Introduce your original. When you supply a photostat the original can be returned to the Valley National Bank, whether it is today, to-

(Testimony of Lola Long Darling.)

morrow, next week, or next month. What difference does it make?

Mr. Eubank: Can we have permission, then, to have the Government's Exhibit 5 photostated?

The Court: Yes, sir.

Mr. Eubank: Is this in evidence now?

The Court: Yes.

The Clerk: Government's Exhibit 5 in evidence.

(Said Cashier's Check was received in evidence and marked as Government's Exhibit 5.)

Q. (By Mr. Eubank): In regard to Government's Exhibit 5, the \$500 check, [34] what particular shipment did that relate to?

A. They didn't state any. It was just on an account.

Q. Now, back with your first phone call, did you discuss any \$500 payment with Acme Distributing?

A. No.

Q. How many phone calls followed the first two we have discussed here before, if any?

A. I think there were four all together, collect, from Phoenix, though they called some that weren't collect, but I couldn't tell you.

Q. Are some of those other Collect calls on this bill that you identified earlier?

A. I would say they were all from there, because I didn't hear from anyone else.

Q. I show you Government's Exhibit 1. Can you identify any other calls that might have been from Acme Distributing Company?

(Testimony of Lola Long Darling.)

A. Well, that Tempe.

Q. The Tempe call on what date?

A. It was the 26th of November.

Q. And you have testified that that was the second call, right?

A. To my knowledge, it was the second call.

Q. Okay, what other calls are listed on there that came from Acme Distributing Company? [35]

A. There is one here for the 23rd of November from Phoenix, Collect.

Q. And is that one from Acme Distributing Company?

A. Well, to my knowledge, they were the only ones that called me.

Q. All right, are there any other calls?

A. And then there is one here from—November 27th, from Phoenix, and one the 29th.

Q. And those calls, also, are they from Acme Distributing? A. I would say they were.

Q. Now, these phone calls, Mrs. Darling, were the voices the same voice?

A. I would say all of them except the last call was the same voice.

Q. Is the last call we are talking about the same last call as the collect, the last collect call there?

A. Well, I couldn't say.

Q. You couldn't say? A. No.

Q. But there was a difference in voice on the last call that you had?

A. On the last call, yes, I would say it was a different voice on the last call.

(Testimony of Lola Long Darling.)

Q. Did each one of these calls identify themselves, and if so, how? [36]

A. All of them were Acme except the last call I had.

Q. And as far as a name was concerned, was any name mentioned?

A. No, not on the first calls, except the last, there was a name mentioned.

Q. On the calls from Acme, what was the general character of the call?

A. Well, they would call and ask—tell me the amount of fruit they wanted sent, and when it could be sent.

Q. And did you at any time discuss the collection of the accounts due from them?

A. Well, toward the end of the second week when I didn't get any money, then I told them if they didn't send the money I wouldn't make another shipment.

Q. And what did they say to that?

A. They informed me it would be in the mail it was either a Monday or Tuesday, I think.

Q. And when did you receive the letter?

A. The day they said it would be there. It was either a Monday or Tuesday.

Q. The letter arrived?

A. Yes. And then a shipment was made the next day again.

Q. Could you look at your records and tell how large a shipment was sent the day after you received the check?

(Testimony of Lola Long Darling.)

A. Yes, if you have that. [37]

Q. Here it is.

A. Their check was received on the 12th, and on the 13th I sent 90 cases of one-pound cartons.

Q. How much did that amount to?

A. \$1012.50

Q. And did you make any shipments after that?

A. No.

Q. Now, this last phone call that you have testified to that the voice didn't sound like the previous ones. Would you please describe that for the benefit of the jury? First, how did he describe himself, and what was he interested in?

A. Well, the call came to Long's Date Gardens, and I answered the phone, and he wanted to know if we had any cheap dates, and I said No, I didn't have anything. And he identified himself as Hoffman on the telephone call. And I said that I didn't have the cheap dates.

I said I was sending all I had, you know, to this Acme Distributing in Tempe. And he said, well, that was funny, he was getting a load into Phoenix every day for that price, for 10 cents a pound, I think was the price he quoted me as wanting to buy them for.

Q. Now, what did you do after receiving this telephone call?

A. After I received that and added two and two up, I didn't ship any more dates. [38]

Q. Up until you received that call, had you had any reason to suspect Acme Distributing Company?

A. No, I didn't until toward the second, the end

(Testimony of Lola Long Darling.)

of the second week when they didn't make any payments. Then I began to wonder about what was going on, you know.

Q. Now, when you received this last telephone call, did you take any steps to protect yourself and your business?

A. Yes, we came down to Phoenix.

Q. I beg your pardon?

A. We came down here to Phoenix.

Q. And how long after that last call did you come to Phoenix?

A. I believe it was the 15th of December.

Q. And did you attempt to locate Acme Distributing Company?

A. Yes, we did.

Q. And were you successful in finding it?

A. We found an empty building, was all.

Q. Where was this empty building at?

A. 818 Apache Boulevard in Tempe.

Q. Did you go up to the building and look into it?

A. Yes, we did.

Q. What did you see in there?

A. Just an office desk and a chair.

Q. Was there any sign on the window? [39]

A. Yes.

Q. And what was the sign?

A. It said Acme Distributing.

Q. On looking through the window, what was the furniture in the office?

Mr. Whitney: If the Court please, I think that is immaterial.

The Witness: Just a desk and chair.

(Testimony of Lola Long Darling.)

The Court: She may answer.

Q. (By Mr. Eubank): What was that?

A. Just a desk and chair is all, I would say.

Q. Was there any file, to your knowledge?

A. No.

Q. Did it look like a worked-in office?

A. No.

Q. Was there a telephone in there that you remember? A. I don't remember that.

Q. Mrs. Long, I would like you to identify another item for us.

Mr. Eubank: This will be Exhibit 6, I believe, for identification.

The Clerk: Government's Exhibit 6 for identification.

(Said Package of Dates was marked as Government's Exhibit 6 for identification.) [40]

Q. (By Mr. Eubank): I show you Government's Exhibit 6 for identification and ask you if you recognize this particular package?

A. Yes, that is definitely our pack.

Q. And is this your cover, or binding, or packing? A. Yes.

Mr. Whitney: It is immaterial, if your Honor please, not binding on the defendant.

The Court: They haven't offered it. He just wants you to see it.

Mr. Eubank: I would like to offer this as Government's Exhibit 6 in evidence.

(Testimony of Lola Long Darling.)

The Court: Has it been identified by this witness?

Mr. Eubank: Yes.

The Court: Is that some of the dates you sent over here?

The Witness: Yes, that is our pack.

The Court: It may be received.

(Said Package was received in evidence and marked as Government's Exhibit No. 6.)

Q. (By Mr. Eubank): Now, in regards to the invoices that are in evidence now as Government's Exhibit 3, you have testified that these prices are based upon the 45 cents a pound?

A. Yes, that is right. [41]

Q. Now, at this time is it possible for you to tell the poundage that was shipped in these, approximately, or can that be done?

A. That can be done from that. I wouldn't know offhand without a pencil and paper.

Q. If it is necessary that we compute the poundage, would you explain how we would do it from those figures?

A. There would be 39 cases, and there is four three-pound——

Q. Cartons? A. Yes.

Q. So we would multiply the three pounds times the four, times the 39 cases? A. Yes.

Q. And then we would have the total poundage on each of those boxes? A. Yes.

Q. Mrs. Darling, in regards to your Long Date

(Testimony of Lola Long Darling.)

Gardens, are you a grower-wholesaler? What is your relative position in that particular foodstuff field?

A. Well, we were a grower. We had 52 acres in dates, but we don't grow them now.

Q. At the time of this transaction, were you or were you not a grower?

A. No, I wasn't.

Q. You weren't at that time? [42]

A. No.

Q. The dates that you had, how did you procure them?

A. I got them from a grower in the Coahuila Valley.

Q. And how did you buy the dates from this grower? Were they raw?

A. No, they were processed already for repacking.

Q. For repacking? A. Yes.

Q. Where was the packing done?

A. At our packing plant in Pasadena.

Q. And the packing was done by your company?

A. Yes.

Q. In the price of 45 cents a pound, in relation to the type of date that you were packing, do you know what the market was in Los Angeles and Pasadena at that time?

A. No, I don't recall that, but I got the best grade of fruit that I could get, like we have for our retail business of our own.

Q. And the amount that you charge, or that you

(Testimony of Lola Long Darling.)

contracted with Acme Distributing Company, was that a usual price for that type of fruit?

A. Well, for that good of a fruit, I would say Yes.

Q. And at that time, that was the market price, that was your market price at that time?

Was that your market price? [43]

A. Well, wholesale, yes, I would say that would be it, but not retail.

The Court: We will suspend until two o'clock. Keep in mind the Court's admonition.

(The noon recess was taken.)

Two o'Clock P.M.—September 18, 1956

Court resumed pursuant to recess.

Present: Same as before.

The Court: You may continue.

LOLA LONG DARLING

resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Eubank:

Q. Mrs. Long, before you received the final telephone call that you testified to before we left this morning, did you send a final—and this is also after you received the \$500, did you send a statement of account to the Acme Distributing Company?

A. At the end of the month of November? [44]

(Testimony of Lola Long Darling.)

Q. Yes. A. Yes, I did.

Q. At the end of December?

A. I would have to look on those sheets there to see what was the last date I made.

Q. I show you Government's Exhibit 3 in evidence, and see if you can tell by that?

A. Well, December 14th evidently was my last bill that was sent, and that was for the last shipment.

Q. That was for the last shipment. And do you recall that you sent a statement after that in which you put in the \$500 that you had received?

A. Sent it to them?

Q. Yes. A. I don't recall that I did.

Mr. Eubank: Would you mark this Plaintiff's Exhibit 7 for identification?

The Clerk: Government's Exhibit 7 for identification.

(Said Invoices were marked as Government's Exhibit 7 for identification.)

Q. (By Mr. Eubank): I show you Government's Exhibit 7 for identification, and ask you if you recognize this document?

A. Yes, that was the final one that I sent after I didn't receive payment from the 14th, for the whole total. [45]

Q. And do you recognize this document?

A. Yes. Yes.

Q. Is it a part of your records, or would it be a part of your records?

(Testimony of Lola Long Darling.)

A. Yes. That was the copy sent to them, wasn't it, or was that the copy that I sent to Mr. Renner?

Q. Yes. Now, in regard to this particular copy, can you tell the date that it was sent?

A. Well, this is dated December 30, 1954.

Q. And what relationship did that date have to the \$500 that was paid on account?

A. Well, it was here that it is taken off of the total.

Q. And to your recollection, this is the actual——

A. Balance.

Q. ——balance due that you claimed from Acme Distributing Company at that time?

A. Yes.

Mr. Eubank: I move to offer this Government's Exhibit 7 for identification in evidence.

Mr. Whitney: I object to it as not properly identified.

The Court: It may be received.

(Said Invoices were received in evidence and marked as Government's Exhibit No. 7.)

The Court: You said you mailed statements to this company in Tempe? [46]

The Witness: Yes.

The Court: Were they returned to you?

The Witness: No.

The Court: They were not?

The Witness: No.

Q. (By Mr. Eubank): One item that I haven't cleared up too much. I show you Government's Exhibits 2 through 2-M, and ask you to tell the Jury

(Testimony of Lola Long Darling.)

how many separate shipments that you made to the Acme Distributing Company?

A. There is 14 bills of lading; that should be the total.

Q. There would be that many shipments then?

A. Yes.

Q. On that particular type of date, state whether or not there were different qualities of the date that you were shipping into Arizona?

A. Well, they make about four different grades, but I sent the best that I had.

Q. On all your shipments to Arizona, was the grade the same? A. Yes.

Q. What was the retail price of this particular grade of date in California?

A. Sixty-five a pound we got retail.

Q. And when you say "we got"?— [47]

A. In our retail business.

Q. When you sold them there? A. Yes.

Q. When was the last time, to your knowledge, that your dates had been shipped for retail market here in Arizona?

A. Well, just when I sent it to them, as far as anything going into Arizona.

Q. Okay. How far back from that point?

A. I don't know of anything before December of 1951, or November, was it? Is that what you mean, before?

Q. That is right. Why can't you testify before that date as to what was shipped into Arizona?

A. Nothing was sent by me.

(Testimony of Lola Long Darling.)

Q. In other words, your testimony is that from December of 1951 to the time of the shipping to Acme Distributing Company, your date was not shipped into Arizona, is that correct?

A. No, not for wholesale.

Q. Not for wholesale? A. No.

Mr. Eubank: No further questions, your Honor.

Cross-Examination

By Mr. La Prade:

Q. Mrs. Darling, you testified on direct examination that [48] the terms of your sale were ten days, net thirty. Would you explain that to the Jury?

A. Well, that is what we allow any of our customers that we wholesale any of our goods to.

Q. Just explain it.

A. Well, if they pay it in ten days, that is what we allow, and if they don't pay us within thirty, then we would have to do other means, I mean, a form of collection.

Q. You mean a discount if paid in ten days, but due within 30 days?

A. No. We just figured we would give them the ten days, but if they couldn't make it within the ten, we would leave them the thirty, but not over that.

Q. Referring to Government's Exhibit 7 in evidence, the invoice is dated November 30. Would it be my understanding from these that your having sent these statements out on or about December 30,

(Testimony of Lola Long Darling.)

that they would not be due until thirty days after that, is that correct?

A. No, from the date of the invoice. Each invoice was individual, and then they didn't pay them, so I just put whatever was for November for that month, see.

Q. Referring to Government's Exhibit No. 2 in evidence, and 2-A through M in evidence, can you tell from those what the date of your last shipment was to Arizona, as you have testified? [49]

A. This is December the 13th.

Q. And that was the last shipment you made to Arizona, was on December 13, 1954?

A. To my knowledge, yes, that is the last.

Q. Were there any more orders placed with you after that day? A. No.

Q. Then the date of the order for the last shipment was probably some few days before you shipped it, wouldn't that be correct?

A. Well, there for a while he was calling me almost every day.

Q. What I mean is, you say your last shipment went out on December 13th? A. Yes.

Q. So would it be correct just to presume that the order was placed some time prior to then, the day before. or some days prior to that?

A. Yes.

Q. Do you have any independent recollection when the last order was placed for dates?

A. It was probably just about a day ahead of that. They even called and wanted a shipment sent

(Testimony of Lola Long Darling.)

out on Sunday, and I said the trucking company didn't go out on Sunday, but whoever called informed me they did, so I sent out one shipment [50] on Sunday.

Q. So if I told you December 13th was on Monday, and the 12th was on Sunday, then the last order would have been placed on Saturday, the 11th?

A. Whatever day is on there is the day it went out, the shipment went out.

Q. I am speaking of the date the order was placed. You say it was asked it be shipped on Sunday. Was it perhaps the day before Sunday that that request was made?

A. I would say probably so.

Q. Do you have any independent recollection of what day of the week or date of the month that you received, as you have testified you received the Government's Exhibit No. 4?

A. Well, I was thinking it was on a Monday or Tuesday, but I'm not positive.

Q. Mrs. Darling, if you received the last order for merchandise which you actually delivered on, say, Saturday, the 11th of December, and you received the \$500 money order on either Tuesday or Wednesday or Monday of the following week, then would it not be true that you did not ship any merchandise by virtue of having received some token payment, as the Government has alleged?

A. Well, I would say that is the only reason I sent it, on account of me receiving the check. If I

(Testimony of Lola Long Darling.)

hadn't received the check, there wouldn't have been any merchandise sent out. [51]

Q. Isn't it true you received the check after you shipped the last shipment of dates?

A. No, I have the thing checked off as the 12th, and the shipment was sent the 13th.

Q. Mrs. Darling, let me call your attention to the fact that the date on the Government's Exhibit No. 4 in evidence is postmarked December 13th?

A. Yes.

Q. May I note the presumption that if that was mailed on that date, then perhaps you received it on Tuesday the 14th?

A. Well, I thought it was either Monday or Tuesday. It could have been an error on my paper there that I put, but the dates were definitely sent after I got the \$500 check.

Q. Then it would be your testimony that you did receive the check before you made the last shipment?

A. That is right.

Q. And can you explain to us why the last shipment is dated the 13th, the same day that the purported envelope from Phoenix, Exhibit No. 4, is also dated the 13th, which would have been in Phoenix on that date?

A. I couldn't say.

Q. Wouldn't it be more logical to assume that perhaps your shipment went out the day before you received the check?

A. It could have come in the morning's mail, because it didn't usually come until noon, see. [52]

(Testimony of Lola Long Darling.)

Q. May I again call your attention to Government's Exhibit 4, this envelope, and show you the date it was mailed, and the time it was mailed in Phoenix, as it purports, 11:30 a.m.? A. Yes.

Q. Then isn't it possible that your recollection is in error to the extent that you probably did ship the merchandise the day before you received the check?

A. No, I would say if there was any error, it was made on the little thing that I put there as to the date.

Q. What date did you testify you came over to Phoenix?

A. I was thinking it was around the 15th of December, 1954.

Q. Were there any moneys past due at that time?

A. It was all past due, except the \$500 that I had received.

Q. When, if ever, did you become acquainted with any particular person in the postal inspector's office?

A. Why, I contacted him when I came down here, and I had Mr. Renner work on this case for me.

Q. That was after you came over here?

A. Yes.

Q. You didn't have any conversations over the phone?

A. I talked to someone in Pasadena. It was the F.B.I. there. [53]

Q. Referring to Government's Exhibit No. 3,

(Testimony of Lola Long Darling.)

these invoices with the dates and the quantity, on November 24, 26, 30, those are the dates the merchandise was shipped? A. Yes.

Q. And it would be ten days, net thirty, that the money was due after those dates, is that correct?

A. That is correct. That is the way we sent all of our billing.

Q. Wouldn't it be reasonable to presume that if Acme did owe you any money on account of merchandise shipped and received that they would have at least thirty days after the date of shipment in which to pay you?

A. Yes, I billed them, but I never received anything, or any word from them.

Q. Mrs. Darling, on Government's Exhibit 7 in evidence, I will call your attention to the last page thereof, where it states: "Paid on account, 12-12-54. Balance due—" opposite that date the figure "\$500.00"? A. Yes.

Q. Wouldn't that be an incorrect date, inasmuch as the envelope is dated the day after that?

A. That is what I say, that is probably an error there, as far as that.

Q. So probably that should have stated 12-14, the date of receipt of the envelope? [54]

A. Well, whatever day it would have been.

Q. Mrs. Darling, what percentage of your total gross sales would a sale of \$17,000 have been in that particular year? A. Pardon?

Q. You have testified this order placed totalled

(Testimony of Lola Darling.)

approximately \$17,000. Would that be a large percentage of your gross volume for the year 1954, or would that be an average sized sale? I am trying to develop how big a piece of business was that to your firm?

A. Well, that would be a fair-sized business.

Q. But it is your testimony that you received a large order in the sum of \$17,000 over the telephone, and that you shipped it after that conversation, is that right?

A. Just from the fellow's talk from the phone call. But it wasn't all sent at once. It was ordered each time, say, over the telephone, what he would want.

Q. You didn't know who you were talking to, did you?

A. No, I asked them, and they just says Acme Distributing in Tempe.

Mr. La Prade: That is all.

Mr. Eubank: I have no further questions.

The Court: That will be all.

Mr. Eubank: I request that this witness be allowed to be excused at this time. [55]

Mr. Whitney: No, I would rather not, at least until tomorrow, and think this thing over.

The Court: You let us know in the morning, then. That is time enough to think it over. If you don't want to call her, I will excuse her then. Call your next witness.

Mr. Eubank: Mr. McRuer.

DUNCAN McRUER

called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Duncan McRuer?

A. That is right.

Q. You are the local manager of Watson Brothers Trucking Company at 241 South 13th Avenue here in Phoenix, Arizona?

A. That is right.

Q. Mr. McRuer, how long have you been with Watson Brothers? A. Since June of 1949.

Q. And how long have you been in the trucking business? A. Well, since 1939.

Q. Do you recognize the name of Ben B. Hoffman? A. Ben Hoffman, yes.

Q. And do you recognize the name Acme Distributing Company? A. Yes, sir. [56]

Q. And do you recognize the name Long's Date Gardens, Pasadena, California? A. Right.

Q. Do you recognize the name of C. A. Glass Company of Los Angeles, California?

A. Yes.

Q. Do you recognize the name of Gavin Brothers in Seattle, Washington? A. No, I don't.

Q. Do you see Mr. Ben Hoffman in this room?

A. Yes, Mr. Hoffman is sitting right behind you.

Q. Is that this gentleman seated here?

A. That is right.

(Testimony of Duncan McRuer.)

Mr. Eubank: May the record show that Mr. McRuer has identified Mr. Hoffman.

Mr. Whitney: He is sitting in court here. You don't need any further identification than that.

Q. (By Mr. Eubank): Mr. McRuer, you are here under a subpoena duces tecum of the Government, isn't that correct? A. That is right.

Q. And we asked you to bring your company's invoices on shipments made by Long's Date Gardens in Pasadena, and C. A. Glass Company, that were made through your local office, is that correct? [57]

A. That is right.

Q. Did you bring those with you?

A. Yes, I did.

Q. Now, for the jury's information, can you explain what these documents are?

Mr. La Prade: If your Honor please, can they be marked for identification before questioning on it?

The Court: I think so.

Mr. Eubank: Mark these for identification Government's Exhibit 8, and it would be 8-A through whatever letter.

Q. (By Mr. Eubank): Mr. McRuer, are the C. A. Glass shipments included in this stack?

A. They are in that also. There is also one in there from the California Date Garden Company, or something like that.

Q. While we are waiting for these to be marked for identification, would you tell the jury the type of record these are?

A. These are copies of freight bills that cover

(Testimony of Duncan McRuer.)

a shipment when a shipment is given to a trucking company or common carrier. They issue a bill of lading which is taken to the office of the company, and then they cut a freight bill, type the information on the freight bill, and that moves with the shipment to the city where the shipment is going. In this case they came from Los Angeles to Phoenix with this freight [58] bill. Then when we deliver the dates to Mr. Hoffman, he signs the freight bill, and one copy goes into our home office and one into our files.

Q. And these copies you brought here today are from the Phoenix files?

A. From the Phoenix files.

The Clerk: Government's Exhibits 8, 8-A to 8-T, inclusive, for identification.

(Said freight bills were marked as Government's Exhibits 8, 8-A to 8-T, inclusive, for identification.)

Q. (By Mr. Eubank): I show you Government's Exhibits 8 through 8-T, inclusive, and ask you if those are the records that you brought with you this afternoon? A. They are.

Q. Now, are these the type of instrument you were just telling the jury about?

A. Yes, it is our plain ordinary freight bill.

Q. In this particular case, what shipment would these have covered?

A. They are identified by a freight bill number which is our identifying number. Then this shows

(Testimony of Duncan McRuer.)

a shipment from the C. A. Glass Company of Los Angeles, California, on their bill of lading No. 1772, shipped on the 15th of November, 1954, left Los Angeles on truck No. 5759, to the Acme Distributing [59] Company of Tempe, Arizona, and the signature of delivery is the Acme Distributing Company, by Ben Hoffman.

The Court: How did we get to the Glass Company? We were talking about the Long's Date Gardens.

Mr. Eubank: Most of these are the Long Date Gardens.

The Court: Well, then, refer to those. You will have this thing all mixed up here. I can't follow you.

Mr. Eubank: I was going to——

The Court: I don't know what you are doing, but you do it the way I say.

Mr. Eubank: Would you remove the C. A. Glass ones?

The Witness: Here is the Long Date Gardens shipment of the second of December, 1954, covering 97 cases of dates moving from Long's Date Gardens to Acme Distributing Company.

Q. (By Mr. Eubank): Would you look these over and make sure all of this group are of Long Date shipments?

A. These are all Long. These are the Long's.
(Handing to counsel.)

Mr. Eubank: Now, may the record show that

(Testimony of Duncan McRuer.)

the following exhibits are Long's Date shipments: 8-E, F, G, H, J, K, L, M, N, O, P, Q, S and T.

I now move that these freight bills be accepted in evidence.

Mr. Whitney: May I ask one question on voir dire? [60]

The Court: All right.

Q. (By Mr. Whitney): Mr. Witness, examining Government's Exhibit 8 for identification, what bill shows the last shipment?

A. The last one?

Q. Yes. (Witness hands document to counsel.)
That is on 12/13?

A. Left Los Angeles on 12/13.

Mr. Whitney: We have no objection to them.

The Clerk: Government's Exhibit 8-E, 8-F, G, H, J, K, L, M, N, O, P, Q, S and T in evidence.

(Said Freight bills were received in evidence and marked as Government's Exhibits 8-E, 8-F, 8-G, 8-H, 8-J, 8-K, 8-L, 8-M, 8-N, 8-O, 8-P, 8-Q, 8-S and 8-T.)

Q. (By Mr. Eubank): Now, Mr. McRuer, I would like you to look at these freight bills again, and ask you whether or not, or how long you have known Ben Hoffman in the Phoenix area?

A. Since some time in 1950, the summer of 1950, I believe.

Q. On these particular shipments, do you recall how they were handled by your company upon receipt in Phoenix?

(Testimony of Duncan McRuer.)

A. Well, these date shipments were hauled to our dock when they came in on the line truck, and they were unloaded onto our freight platform and held there for Mr. Hoffman to pick up. He and an assistant would come by with a truck and pick them up. [61]

Q. Was that the usual way he did business when he did business with Watson Brothers?

A. He said he was doing business as the Acme Distributing Company. He picked them up at our dock.

Q. Was there any payment that was required of him before the dates were delivered to him?

Mr. Whitney: I object. Immaterial.

The Court: He may answer.

The Witness: He paid cash on the freight bill to us before we would deliver the merchandise to him.

Q. (By Mr. Eubank): Then these signatures, what relation did they have to the delivery?

A. He would sign for delivery at the time that he paid the freight bill, or at the time he went out on the dock to take the truckload, load the dates in the truck.

Q. Are you acquainted with his signature?

A. Yes, I have seen it several times.

Q. Did you, or did he sign his signature before you on these freight bills?

A. On some of them.

Q. On some of them? A. Yes.

Q. Would you recognize his signature if you saw it? [62]

(Testimony of Duncan McRuer.)

A. I believe so. It is a big characteristic signature on all the bills, and some of them were signed in front of me that I know is his signature.

Q. Could you say whether or not these are Ben Hoffman's signatures on the bottom of this freight bill?

A. This particular freight bill, because of this mark on here about the five-cent refund was signed in front of Mr. Hirsch, who is also subpoenaed. This one, this one, this one. This one. This one. These were all signed in front of Mr. Hirsch. This bill was probably signed in front of me because this is my writing where I have changed the freight rate.

Q. How is that signed?

A. Ben Hoffman, in the characteristic signature.

Q. By whom?

A. Acme Distributing Company, by Ben Hoffman.

Q. Would you go on through there, and would you say that is——

A. That is Ben Hoffman's signature, Acme Distributing Company, Ben Hoffman. Acme Distributing Company, Ben Hoffman.

Q. Let's see. These exhibits you have already said are Ben Hoffman's signature are 8-K, 8-L and 8-M?

A. Right.

Q. What about 8-N?

A. 8-N is Ben Hoffman, Acme Distributors, Ben Hoffman. [63]

Q. And 8-O?

A. 8-O, Acme Distributing, Ben Hoffman.

(Testimony of Duncan McRuer.)

Q. 8-J? A. P, I believe.

Q. P?

A. Acme Distributors, Ben Hoffman.

Q. And those are all of his signature, is that right? A. I believe it is.

Q. And 8-Q? A. Ben Hoffman.

Q. And 8-S? A. Ben Hoffman.

Q. And 8-T? A. Ben Hoffman.

Q. Isn't it true, Mr. McRuer, that on several occasions you observed Ben at your dock?

Mr. La Prade: Your Honor, I object to these leading questions.

The Court: He said he had seen him there several times. Go ahead.

The Witness: Yes, he used to come down in the morning and either wait for the truck, or shortly after the truck would come in, come in to get his dates.

Q. (By Mr. Eubank): These are in relation to the Long's Date [64] shipments?

A. Long Date shipments, yes.

Q. Did you receive a telephone call from the Long's Date Gardens in the latter part of December?

Mr. Whitney: Answer that yes or no.

The Witness: No.

Q. (By Mr. Eubank): In regard to the last transaction that you can recall in which Ben Hoffman appeared at the dock for dates, would you please describe the conversation that occurred between the two of you at that time?

(Testimony of Duncan McRuer.)

A. Well, the last time I saw Ben Hoffman he came to the terminal to ask if the dates, if his dates had come in yet, and I told him, No. And he said, Would you teletype Los Angeles to see if they are on a later truck? And I said, "I don't think there will be any dates, because yesterday after you were down we received a teletype from our Los Angeles office that the——"

Mr. Whitney: I object to the teletype conversation.

The Court: He is telling what he told the defendant. Go ahead.

The Witness (Continued): We had received a teletype from our Los Angeles office saying not to deliver the dates to Hoffman, [65] to Acme Distributing. The shipper had requested they be held. And I teletyped them back they were already delivered, picked up by the consignee, Ben Hoffman, Acme Distributing. And because of the statement they were holding them, I didn't expect them in the next day. When I told that to Mr. Hoffman he turned around immediately, left the office, got in his car, and drove off.

Q. (By Mr. Eubank): Did he say anything?

A. He just asked me, "They said hold the dates and not deliver them right after I had gotten them, or shortly after I had gotten them," or words to that effect. He wanted to be sure they had told me not to deliver the dates. And I said, "After you got them, that is right."

(Testimony of Duncan McRuer.)

Q. That Ben Hoffman you are referring to is the same gentleman you have identified here?

A. Yes, the same Hoffman.

Q. And is this the gentleman that on occasions picked up Long's dates on your dock?

A. That is right.

Q. Your testimony, Mr. McRuer, is that all of the shipments were delivered to Acme Distributing Company by Ben Hoffman, at your dock. Was there any occasion that a delivery was attempted at the Tempe office of Acme?

A. I believe the first shipment that we got for Acme [66] Distributors—Are you referring to dates, or just freight?

Q. Dates.

A. No, we didn't attempt delivery on any dates, I don't believe.

Q. Where did you get that information? I mean, were you under a specific order from Acme, or why didn't you make the delivery?

A. Before that, a couple of months before that we had had some salmon for Acme Distributors which we were unable to deliver because they had no warehouse, no place in Tempe at that address. And later we had delivered the salmon to another place here in Phoenix, a store here in Phoenix, and at that time Mr. Hoffman said he would contact us when shipments were coming, or he knew freight was coming, so before the dates ever came in he called in and said, "I am expecting some freight."

In fact, he called for several days, I believe, and

(Testimony of Duncan McRuer.)

said, "I am expecting some freight, and hold it, and I will tell you where to deliver."

Q. With regard to Mr. Hoffman at the freight dock, what was his demeanor at the freight dock? Did he spend quite a bit of time there awaiting shipments, or did he just come in at certain times when you notified him?

Was there anything that you, in your own knowledge, remember of these circumstances? [67]

A. I would say, as a rule, he almost every day that there was a shipment, he would be there waiting for the shipment, or he would arrive within 15 or 20 minutes after the truck did with the dates. We never called him to come after them. He always came down and waited for them, or arrived very shortly after the truck did.

Mr. Eubank: No further questions.

Cross-Examination

By Mr. Whitney:

A. Mr. McRuer, this last shipment here from the Long's Date Gardens to Acme Distributing Company that you said went out of Los Angeles on the 13th of December, 1954? A. Right.

Q. Where did you pick up those dates?

A. The dates?

Q. Yes.

A. It would appear from the way this is worded here that they were either brought to our terminal

(Testimony of Duncan McRuer.)

by the Long Date Company, or by some local transportation company.

Q. Is there anything on there to tell what day you received them?

A. Yes, the rules state we are supposed to date this freight bill the day we receive the shipment.

Q. And the date you sent it out? [68]

A. And the date you sent it out.

Q. I see. You didn't have any conversation with Mrs. Darling of the Date Gardens in connection with this matter?

A. Not until she was in Phoenix personally.

Q. I mean at the time of the shipment?

A. No.

Mr. Whitney: I see. That is all.

Mr. Eubank: No further questions.

(Witness excused.)

Mr. Eubank: I call Mr. Hirsch.

MITCHELL HIRSCH

called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Mitchell Hirsch? A. Yes.

Q. You are the District Sales Manager of Watson Brothers Trucking Company?

A. That is right.

Q. That is located at 241 South 13th Avenue

(Testimony of Mitchell Hirsch.)

in Phoenix, Arizona? A. That is right.

Q. I want to show you Government's Exhibits in evidence [69] 8-F, E, Q, H, J, K, L, M, N, O, P, G, S and T, and ask you if you recognize those documents?

A. I recognize this one. This one. I recognize these.

Q. How do you specifically recognize these, Mr. Hirsch?

A. Well, we have a provision in our shipping tariff that if the customer picks up a shipment on our dock, we make a dock delivery allowance of 5 cents a hundred, and at the time these shipments came in, Mr. Hoffman came into our office, and I act as rate clerk before 10:30, and he came over to me and said he heard he was entitled to an allowance of 5 cents a hundred, and I said it was true, so I took these bills and made the adjustment to allow him 5 cents a hundred, and that is my writing there where I did it.

Q. On these particular bills did Mr. Ben Hoffman sign before you?

A. That is right, he signed the bills before me, and I took them to the cashier where he paid the cashier.

Q. Do you know Mr. Hoffman by sight?

A. Yes, I do.

Q. Is he in this courtroom?

A. Yes, he is.

Q. Would you point him out to the jury?

A. The gentleman right over there.

(Testimony of Mitchell Hirsch.)

Q. Had you known Ben before this particular transaction?

A. I have known him all during the time he was shipping [70] at this particular time, in other words, while he was shipping dates I knew him, saw him all the time down there, practically every day.

Q. On each of these exhibits here, first, 8-F, is that Mr. Hoffman's signature? A. No.

Q. That isn't?

A. It doesn't look like it to me.

Mr. Whitney: I beg your pardon?

The Witness: It doesn't look like it to me.

Q. (By Mr. Eubank): 8-F is not Mr. Hoffman's signature?

A. The rest of these are. That could be. I guess he just scribbled it a little bit. When I look at these others, it could be his signature. I am not sure of that one. It is sort of a scribbled deal.

Q. 8-F, your testimony is you are not sure of. How about 8-E?

Mr. Whitney: Mr. Attorney, what is the purpose of this? To show he got the stuff?

Mr. Eubank: This is identity, yes, sir.

Mr. Whitney: You mean to identify Mr. Hoffman?

Mr. Eubank: To identify Mr. Hoffman with the shipment and Acme Distributing Company.

Mr. Whitney: We admit Mr. Hoffman got the stuff from [71] the Date Gardens, Long's Date Gardens.

Q. (By Mr. Eubank): You say 8-E is Mr.

(Testimony of Mitchell Hirsch.)

Hoffman's signature? A. That is right.

Q. And 8-G? A. Yes.

Q. 8-H? A. That is right.

Q. And 8-J? A. Yes.

Q. Now, in the shipments to Mr. Hoffman there at Watson Brothers Company, did you observe Mr. Hoffman on the docks?

A. Yes, sir, at various times.

Q. How did you observe him? I mean, waiting for these shipments?

A. We would susually get a phone call. He called once or twice during the day about dates arriving, and as sales manager of the company, I always checked the mainifest each day to see what shipments are coming in, who we are doing business with, and we would notice his name on the manifest, and get a call, and I would answer, or one of the girls, and he would want to know if dates were in. He would always come to the office to pay the bills, and he would always be on the dock, and I would see him. Just in the normal business I did see him every day, I guess. [72]

Mr. Eubank: I have no further questions.

Mr. Whitney: No questions.

(Witness excused.)

The Court: We will have our afternoon recess. Keep in mind the Court's admonition.

(The afternoon recess was had.)

The Court: You may continue.

GEORGE RENNER

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is George Renner?

A. Yes. George L. Renner.

Q. And you formerly resided at 515 East Oregon
Street in Phoenix, Arizona? A. Yes, sir.

Q. Where do you reside now, Mr. Renner?

A. In Flagstaff, Arizona.

Q. What is your occupation now?

A. I am the manager of the Flamingo and El
Rancho Motor Hotel in Flagstaff.

Q. Do you recall the name of Mr. Ben Hoff-
man? A. Yes, I do. [73]

Q. Do you recall the name of Acme Distributing
Company? A. Yes, I do.

Q. Do you recall the name of Long's Date
Gardens? Long's Date Gardens, Pasadena, Cali-
fornia? A. Yes, sir.

Q. Would you please inform the Jury when you
first heard of the name of Long's Date Gardens?

A. In December 15 of 1954, Mrs. Lola Darling
came up to me and asked me to assist her in locat-
ing a business known as the Acme Distributing
Company, and a man known by the name of Ben
Hoffman.

Q. And what was your business capacity at that
time?

(Testimony of George Renner.)

A. I held a commission, a deputy commission with the Maricopa County Sheriff's Department, and I was doing some investigating work.

Q. And were you employed by the Adams Hotel?

A. Yes, sir.

Q. In what capacity?

A. As a house officer.

Q. In your investigation, were you successful in locating Acme Distributing Company?

A. Yes, I was.

Q. And where did you locate Acme Distributing Company? A. At 818 Apache Boulevard.

Q. What city? [74]

A. On the Tempe-Mesa road.

Q. Was there anyone present on the premises at the time you were there? A. No, sir.

Q. Did you look into the, what was it, a building? Office?

A. It was a vacant store, but it had the name of Acme Distributing Company on the window.

Q. And did you look through the window?

A. Yes, sir.

Q. What was in the building?

A. There was nothing to be seen.

Q. Was there any furniture to be seen?

A. No.

Q. Nothing in there? A. No.

Q. Was there anyone around that was able to inform you of the whereabouts of Acme?

A. I spoke to the hotel owner who also owns the

(Testimony of George Renner.)

property in front, and he don't know too much about Mr. Ben Hoffman, and he said he stops there occasionally.

Mr. Whitney: I object to that as hearsay.

The Court: All right. Don't state what he told you.

Q. (By Mr. Eubank): How long did you work on the case, Mr. Renner?

A. From the 15th until the 23rd. [75]

Q. Were you successful in that time in locating Acme Distributing Company? A. Yes.

Q. And where did you locate them?

A. At 818 Apache Boulevard.

Q. I see. Other than that location, were you successful in finding any other location?

A. No, sir.

Q. And did you find Ben Hoffman?

A. Yes. I seen him on several occasions.

Q. Did you happen to talk to him in regard to this? A. No, sir.

Q. On the occasions that you saw Ben, would you please state what occasion that was?

A. At the Watson Freight Lines, he was unloading dates from the docks on two pickup trucks.

Q. And was there any other time that you saw him?

A. No, that was the times I seen him.

Q. Do you see Mr. Hoffman in this room?

A. Yes.

Q. Can you point him out?

A. Sitting right in back of you.

(Testimony of George Renner.)

Q. The gentleman here? A. Yes.

Mr. Eubank: No further questions. [76]

Cross-Examination

By Mr. La Prade:

Q. Mr. Renner—Is it Renner?

A. Yes, sir.

Q. You state that Mrs. Darling employed you personally to do some investigating? A. Yes.

Q. That is, she came over here and employed you? A. Yes.

Q. What was the date, sir?

A. That was the 15th of December, 1954.

Q. And it was after she employed you that you saw Mr. Hoffman? A. Yes.

Q. At the Watson Freight dock?

A. Correct.

Q. Are you sure of your dates, sir?

A. Yes, sir.

Q. You saw Mr. Hoffman on the Watson Freight dock? A. Yes.

Q. After she employed you, because you were looking for him? A. Yes.

Q. What was he unloading or loading?

A. Dates. [77]

Mr. La Prade: That's all.

The Court: Is that all from this witness?

Mr. Eubank: Yes.

The Court: You may stand aside.

(Witness excused.)

Mr. Eubank: At this time I would like to call Mr. William W. Pritchett.

WILLIAM W. PRITCHETT

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is William W. Pritchett?

A. That is right.

Q. And you own a building at 818 Apache Boulevard in Tempe, Arizona? A. Yes, sir.

Q. What type of building is that, Mr. Pritchett?

A. Well, it is just a small office space, two rooms, about 10 by 12.

Q. Is there any storage space in conjunction with it? A. No.

Q. Do you operate your own business out of that space?

A. I rent those two offices out. I have a combination trailer court and some cottages, and those two offices. [78]

Q. Do you recognize the name of Ben Hoffman?

A. Yes, sir.

Q. And do you recognize the name of Acme Distributing Company? A. Yes.

Q. Do you see Mr. Hoffman in this room?

A. Yes, sir.

Q. Can you point him out to the jury, please?

A. The man behind you.

(Testimony of William W. Pritchett.)

Q. Did he in the name of that company rent any space from you? A. Yes, sir, he did.

Q. Approximately when was that, Mr. Pritchett?

A. Well, he started to rent on July 1st, 1954.

Q. And how long did he rent?

A. Until March 1st, 1955.

Q. Now, you lived close to your building, is that correct?

A. Well, I live in back of it. It was a store building first, you see, and I remodelled it and made my living quarters and two offices.

Q. Did you live there at the time that this property was rented to Mr. Ben Hoffman as Acme Distributing Company? A. Yes, sir.

Q. Did you observe the operation of Ben Hoffman in this office space? [79]

A. What do you mean by observe in the operation?

Q. Well, living in the proximity that way, did you at any time observe any of the, for example, the comings and goings of Mr. Hoffman, the amount of people that called in his office?

A. Yes, I don't believe I could help notice that.

Mr. Whitney: Your Honor, I believe that is immaterial.

The Court: We will see. Go ahead.

Q. (By Mr. Eubank): The amount of furniture and that sort of thing he had in his office?

A. Yes, sir.

Q. Would you please tell the jury what furniture, for example, was in the office?

(Testimony of William W. Pritchett.)

A. A desk and two chairs.

Q. And was there any filing cabinet?

A. No.

Q. The different times you have observed the office, was there any documents or papers or that type of thing around in the office?

A. I didn't see anything outside of, you know, the license you get from the state of Arizona.

Q. And was there a sign to indicate the company that was in possession?

A. Yes, Acme Distributing Company was on the glass window, [80] glass front.

Q. Approximately how many times do you think you might have looked in there during this period of July 1st through March 1st?

A. That I might have looked in?

Q. Yes, into the office?

A. Well, a good many times, I guess.

Q. A good many times. In regard to Mr. Hoffman, did he spend most of his time at the office, or a great deal of time there? What, generally, was his office habit?

A. Well, he wasn't there very much.

Q. By not very much, would you mean that, well, let's say during this period was he there several times a week?

A. Well, he was there almost every day, but maybe just long enough to pick up his mail. Some days he wouldn't even go in the office. He would pick up the mail.

(Testimony of William W. Pritchett.)

Q. Your testimony would be that he would usually show up for a short time?

A. Yes. About every day.

Q. Did he have a telephone in his office?

A. No, sir.

Q. Did he at any time hire anyone, that you know of, to act as a receptionist in the office?

A. Yes, he hired a girl from the Court there for a little while. [81]

Q. Did he have any other hired personnel in conjunction with the company?

A. Not that I know of.

Q. Did you ever see any books or accounts?

A. No, sir.

Q. Mr. Pritchett, you are here under a subpoena duces tecum. Do you have your rental records?

A. Yes, I have the duplicate receipts. I make my receipts in duplicate. He got the original and that is the duplicate.

Mr. Eubank: Mark this for identification, please.

The Clerk: Government's Exhibit 9 for identification.

(Said rent receipts were marked as Government's Exhibit 9 for identification.)

Q. (By Mr. Eubank): I show you Government's Exhibit 9 for identification, and ask you if you recognize these?

A. Yes, sir, I wrote every one of them myself. That is my signature.

(Testimony of William W. Pritchett.)

Q. And these are what?

A. They are rent receipts. Rent receipts for the office.

Q. And they are for what periods?

A. The date here, 7/1 to 8/1.

Mr. Eubank: I would like to offer Plaintiff's Exhibit 9 for identification in evidence. [82]

Mr. Whitney: I object, on grounds it is wholly immaterial and cumulative.

The Court: It may be received.

The Clerk: Government's Exhibit 9 in evidence.

(Said Rent Receipts were received in evidence and marked as Government's Exhibit No. 9.)

Q. (By Mr. Eubank): I show you Government's Exhibit 9 in evidence, and ask you if you will tell us the dates that those cover, or from what period the receipts cover?

A. The rent covered?

Q. Yes.

A. Well, that was wrote on 7/1, and it paid the rent from 7/1 to 8/1, the first one.

You want to go through all of them?

Q. Let's see, are these in order?

Q. Yes, I think so.

Q. Just skip through to the last date there.

A. Well, the last date was January the 15th.

Q. What year? A. 1955.

Q. And that paid it to when?

(Testimony of William W. Pritchett.)

A. That paid from January 1st to February 1st, 1955. That was 15 days late, see.

Q. All right. Do you recognize the name of Nadine Crane? [83] A. Dean Crane?

Q. Nadine Crane? A. Oh, Nadine Cram.

Q. Oh, Cram, pardon me. And who was Nadine Cram?

A. That was a tenant of mine in the trailer court that worked for Mr. Hoffman.

Q. Mr. Pritchett, when Mr. Hoffman contracted this space, did you discuss his business with him?

A. Well, not very much. He just told me he was a wholesale distributor, and he wanted an office, so that is about all—We didn't talk about it very much.

Q. Did he describe what he expected to do with the office in the way of personnel, or anything like that? A. No, sir.

Q. Did you have anything to do with the hiring of a receptionist? A. Not a thing.

Q. Did Mr. Hoffman mention anything to you about warehouse, or warehouse space, that you recall?

A. Well, I believe he did ask me if I had any storage room, and some time he might need some, and I told him I didn't have, didn't have any.

Mr. Eubank: No further questions.

Mr. Whitney: No questions.

The Court: That will be all.

(Witness excused.) [84]

Mr. Eubank: I would like to call Nadine Cram.

NADINE CRAM

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Nadine Cram?

A. That is right.

Q. C-r-a-m? A. Yes.

Q. And you are presently residing at 122 North
29th Street here in Phoenix, Arizona?

A. Yes.

Q. And you are presently a senior in Phoenix
Union High School in Phoenix? A. Yes.

Q. Nadine, do you recall the name of Ben Hoff-
man? A. Yes.

Q. And Acme Distributing Company?

A. Yes.

Q. Tempe, Arizona? A. Yes.

Q. Do you see Mr. Hoffman in this room?

A. Yes, he is. [85]

Q. Will you point him out, please?

A. He is at the far table in the brown suit.

Q. Do you know Mr. William Pritchett?

A. Yes.

Q. Would you tell the Jury how you know Mr.
Hoffman? And Acme Distributing Company?

A. Well, I was living in Mr. Pritchett's trailer
court, and Mr. Pritchett told me he had rented an
office to a Mr. Hoffman, and Mr. Hoffman needed a

(Testimony of Nadine Cram.)

receptionist in his office and he was wondering if I would work for him. It was nearly two years ago.

Q. Approximately what date was that?

A. Well, it was either later July or early August.

Mr. Whitney: What year?

The Court: She said two years ago.

The Witness: Let's see. I am a senior this year, and it was between my Freshman and Sophomore year, during summer. About 1952 or 1953.

Q. (By Mr. Eubank): Now, where, by the way, was this? Where was the motor court located?

A. It was 816 Apache Boulevard.

Q. 816 Apache Boulevard?

A. Yes, in Tempe.

Q. Where was the office of Mr. Hoffman located, do you [86] recall? A. 818.

Q. Now, what did Mr. Hoffman tell you when he hired you?

A. He told me that he was renting this office. He was connected with foods, and he was selling foods to the different stores around town, and he had ordered a phone to go in there, and I was supposed to act as receptionist and get the mail, and take care of any callers that came in, and if anyone phoned for him they would use Mr. Pritchett's court phone, and Mr. Pritchett was to ring a buzzer and I would go into the court phone and use that phone.

Q. And was a buzzer installed in the office?

A. Yes.

Q. Now, what was your pay to be?

(Testimony of Nadine Cram.)

A. \$10 a week.

Q. How long did you work for Mr. Hoffman in that capacity?

A. Approximately two weeks.

Q. And would you explain or describe to the jury the facilities of the office, what furniture was there?

A. There was a desk and two chairs.

Q. Were there any files? A. No.

Q. Were there any books or records?

A. None.

Q. Were there any books at all of any type? [87]

A. No.

Q. Was there any typewriter? A. No.

Q. At the time you were there, was a telephone ever put in? A. No.

Q. At the time you were there, how many calls did you answer on behalf of Acme?

A. Mr. Hoffman called at the office once.

Q. And that was the only telephone call?

A. Yes.

Q. In regard to Mr. Hoffman, how often was he in the office?

A. Well, he would come in sometimes every day to get the mail, and sometimes he wouldn't be in for a day or so.

Q. And how long would he stay in the office?

A. Just long enough to get the mail.

Q. Would you say that you were at the office most of the time alone, or with somebody else?

A. Well, sometimes my sister would come over to see me, but most of the time I would be by myself.

(Testimony of Nadine Cram.)

Q. In relation to Mr. Hoffman, while you were working there, those were the only times that he appeared was usually what, in the morning or in the afternoon? A. In the afternoon. [88]

Q. And did you ever open the mail?

A. No.

Q. Did you ever inquire of Mr. Hoffman of his business, other than the first meeting? A. No.

Q. Were there any shipments to this Acme Distributing Company?

A. None while I was there.

Q. Did any salesmen from any wholesale dealers call there personally while you were there?

Mr. Whitney: I think that is immaterial.

The Court: She may answer.

The Witness: Well, there was one gentleman that came, but I didn't know he was a salesman at the time that he came. I didn't know until later that he was a salesman.

Q. (By Mr. Eubank): Why were you terminated from your job, Nadine?

A. I don't know. I was there for quite a while, and he never did come, and then I believe it was through Mr. Pritchett that they told me that I wouldn't need to work there any more.

Q. Was there any explanation given?

A. No.

Mr. Eubank: No further questions. [89]

Mr. Whitney: No questions.

The Court: That will be all.

(Witness excused.)

KENNETH CLAUS

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Kenneth Claus?

A. Yes, sir.

Q. And you were residing at 1815 East Thomas Road?

A. Yes, sir.

Q. In Phoenix, Arizona?

A. Yes, sir.

Q. And you have been engaged in fruit and date sales in the area, is that correct?

A. That is correct.

Q. Are you familiar with the name of Benjamin B. Hoffman?

A. Yes, sir.

Q. Would you recognize him if you saw him in this courtroom?

A. Yes, sir.

Q. Do you see him here?

A. Yes, sir. (Indicating.)

Q. This gentleman here? [90]

Q. And were you familiar with the name of Acme Distributing Company?

A. I was.

Q. And how were you familiar with that name?

A. Well, they sold dates.

Q. And who was that, when you say they sold?

A. Well, Mr. Hoffman and some other fellow by the name of Harris, I believe.

Mr. Whitney: What is the last name?

The Witness: Harris.

(Testimony of Kenneth Claus.)

Q. (By Mr. Eubank): Now, on or about December 8, 1954, did you happen to purchase any dates?

A. On December 8th, did you say, sir?

Q. Yes, sir, or thereabouts.

A. On December 8th, I did.

Q. Who did you purchase those dates from?

A. From Mr. Hoffman.

Q. Do you remember the type of dates they were? A. Yes, sir.

Q. What type were they?

A. They were Adeglisch-Norris.

Q. Do you recall the company, the designation on the product?

A. I don't quite understand what you mean by a designation, sir. [91]

Q. The title, or the company's right name that was on the box, the type of the date and the name?

A. That was written on the box whose dates they were, is that what you mean?

Q. That is right.

A. As near as I remember, I believe it said Long's.

Q. May I see that slip, please?

A. Yes. (Handing to counsel.)

Mr. Eubank: I would like this marked as Plaintiff's Exhibit 10 for identification.

The Clerk: Government's Exhibit 10 for identification.

(Said Memorandum was marked as Government's exhibit 10 for identification.)

(Testimony of Kenneth Claus.)

Q. (By Mr. Eubank): I show you Government's Exhibit 6 in evidence and ask you if you recognize this box cover, or this type?

A. Yes, I do.

Q. And is this similar to boxes that you bought on December 8th?

A. Yes. I bought—Now, I won't say on December 8th. I bought dates at several different times, but I did buy dates during some of these periods that were in boxes like that.

Q. And those boxes you bought, were they from Mr. Hoffman?

A. I bought them from Mr. Hoffman.

Q. I show you Government's Exhibit 10 for identification, [92] and ask you if you recognize this document?

A. That is my writing. I wrote that bill.

Q. Fine. A. Yes, I recognize it, sir.

Mr. Eubank: We offer this Government's Exhibit 10 for identification in evidence.

Mr. Whitney: You say this is in your writing?

The Witness: Yes, sir.

Mr. Whitney: May I ask a question on voir dire?

The Court: All right.

Q. (By Mr. Whitney): That shows you purchased dates for a total of \$316.25?

A. Yes, sir, if that is what it says on the slip, sir.

Mr. Whitney: If the Court please, I object to it

(Testimony of Kenneth Claus.)

on the grounds that it is not binding on the defendant. It is in his handwriting.

The Court: It would only corroborate what he would say. He would say he bought that from him.

Mr. Whitney: The only thing he could use it for is to refresh his memory as to the dates.

The Court: I suppose so.

Q. (By Mr. Eubank): Mr. Claus, this date on this is December 8, 1954.

A. That was the date you asked me, sir.

Q. And on this document here, is this for your own records? [93]

A. It is, sir.

Q. And do you keep any other records but this record, I mean, of your purchase?

A. Well, I am like most fellows, if I buy some merchandise, at the end of the day I add them all up, how much it was for merchandise, and put them in my book, what it was for, and I went through all of my drawers where I had dates, pertaining to this, and I found five or six receipts here, so I brought them along.

Q. And these receipts were in your file?

A. They were in with all of my bills that I had thrown in a box like I keep them.

Q. Could you recognize that this was a sale from Ben Hoffman?

A. Well, during that period I wasn't buying them from anybody else, so it would have to be. I had two or three more here. That was all through the period of about a month.

(Testimony of Kenneth Claus.)

Mr. Eubank: I ask that that be admitted in evidence, the memorandum.

The Court: All right.

The Clerk: Government's Exhibit 10 in evidence.

(Said Memorandum was received in evidence and marked as Government's Exhibit 10.)

Q. (By Mr. Eubank): Now, Mr. Claus, can you look at this bill, and can you [94] tell from that what you paid a pound for these dates?

A. Well, from memory, they were all about at this time approximately this time, and a couple of other times here, but that time there, well, I will tell you how it was. Let me tell you how it was. I bought some here at one price, and a little bit later on there was another deal come up at a different price, and as near as I can remember, that was approximately 12 cents a pound.

Q. Let us go to the first price range. Approximately when was that? A. Let's see.

Mr. Whitney: You mean you are going into the prices he paid for the dates?

Mr. Eubank: Yes.

Mr. Whitney: I object to it. It is not in the issues to be determined.

The Court: Objection overruled.

Mr. Eubank: You may answer.

The Witness: Well, it says here, I have two bills here made out by the Acme Distributing Company.

Q. (By Mr. Eubank): These are written by Acme and not by you?

(Testimony of Kenneth Claus.)

A. At least they are signed by Acme. This one here, I know I didn't write this, and I didn't mark that one paid. [95] These two here are the only two I have that are not made by myself.

Mr. Eubank: I would like these to be marked as Exhibits for identification 11 and 11-A.

The Clerk: Government's Exhibits 11 and 11-A for identification.

(Said Receipts were marked as Government's Exhibits 11 and 11-A for identification.)

Q. (By Mr. Eubank): I show you Governments Exhibits for identification 11 and 11-A, and ask you to identify those for us. Those are the ones you have just handed me, and you brought with you this morning, is that correct?

A. They are. Only these apples didn't come from him. Them apples I wrote on them, I just wrote on there to keep track of the apples I bought, but for the dates, they are.

Q. Where did you get those documents?

A. Those receipts?

Q. That is right.

A. I may have furnished the receipts. I don't know that, but Mr. Hoffman or either his aide filled these out and marked them, and I don't know which one filled in the writing, but one of them is marked Paid by "B," and one of them is marked Paid by Harris. I don't know. I may have furnished these slips. [96]

(Testimony of Kenneth Claus.)

Q. These receipts, where were these stored in your records?

A. That was in the box with all my other bills.

Q. Where did you get them?

A. The first time I dug them up, or now?

Q. No, now.

A. This time I got them out of the box.

Q. When?

A. About two or three days ago when I got this paper that said I had to come down here.

Mr. Eubank: I ask that these be admitted in evidence.

Q. (By Mr. Eubank): You didn't buy these apples from Mr. Hoffman, did you?

A. No, sir, I didn't.

Mr. Whitney: If the Court please, I don't think these have been properly identified, and we object to them on that ground. No foundation for them. We don't think they are material, anyway.

The Court: They may be received. We will disregard the apples.

The Clerk: Government's Exhibits 11 and 11-A in evidence.

(Said Receipts were received in evidence and marked Government's Exhibits 11 and 11-A.)

Q. (By Mr. Eubank): Now, Mr. Claus, I show you Government's Exhibits 11 [97] and 11-A in evidence, and ask you if you can determine by looking at these the amount you paid per pound for these Long dates?

(Testimony of Kenneth Claus.)

A. Well, as you see, it says One Case of 3-pound Dates. As near as I can remember, there was three pounds in the box. I don't remember how many boxes was in the case. I think there was 12, but I am not sure. And it was three pounds for each box, and it was six dollars for each box, and I sold the box for a dollar.

Q. What would that have been a box?

A. Three boxes in a pound, and one box cost 50 cents. It would be about 16 or 17 cents a pound, wouldn't it, the way I figured?

Q. That is in regard to Plaintiff's Exhibit 11. Now in regard to Plaintiff's, or, rather, Government's Exhibit 11-A, what did you pay a pound for that?

A. This one, this is just the same as that one. One case 3-pound dates, \$6.00. One case three-pound dates, \$6.00. They are the same, only different times, I guess.

Q. The purchase is covered by Government's Exhibits 11 and 11-A for what kind of dates?

A. As near as I can remember, they were Adeglisch-Norris.

Q. That is what company?

A. On these first ones here, I don't remember whether they had Long on or Glass Date Company. It seems one was [98] from Glass Date Company, and the others in the other kind of box were from Long's. I don't know for sure. Some of these may have been Long's. It has been two years. It is

(Testimony of Kenneth Claus.)

hard to remember what was written on the package, because I didn't have many of them.

Q. Could you tell which of these was Long dates?

A. I would say both of them were the same dates, because they were both purchased at the same time, because only maybe one or two times I got some of that kind. The other times they were in another kind of box. They weren't in a three-pound box. They were in the other box, which I think was a one-pound box.

Q. In your recollection, do you recall the type of date that was covered by these two receipts?

A. You mean the variety of date?

Q. The company name of the date?

A. No, that is what I just said, I don't remember whether or not it was the Long Date or Glass Date Company. It could have been either one, because I don't remember which one was on the particular box.

Q. This memorandum that we have in evidence as Government's Exhibit 10, you are certain that that was Long's dates?

A. Yes, because that is just like all the rest of these I have in my hand that was in that one-pound box. I assume it was a one-pound box, but it was that type of box, put it that [99] way, that is there.

Q. These ones you have in your hand, were those written by you?

A. Yes. I was supposed to bring all these, and this is the way I had them down, so that is the way

(Testimony of Kenneth Claus.)

I brought them. This is the date and the amounts as I had them in my bills.

Q. Does that represent a memorandum?

A. They represent what I paid for the dates at the time I bought them.

Q. These are your books?

A. I had them written down in my merchandise for resale. I put these in the box with my bills other than these. I got these figures out of my books. I had written in my books what I had purchased on these dates, and I wrote it down and brought it down like I was told to do.

Q. The group represented on December 13 and December 10, December 9, and December 16, those you will testify are Long dates? Is that correct, these three?

A. I will testify they were in that box there like that. I don't know whose dates they were. I bought them from the Acme Distributing Company. They was in them boxes. I don't know whose dates they were.

Q. This type of box?

A. That type of box, yes, sir.

Q. And it was this color? [100]

A. It was this color. This is the kind of packages most of them were in. One time I got some in a brown cardboard box. There was three pounds in a box. There was nothing on that, but most of them was like that. (Indicating.)

Mr. Eubank: I would like to have these marked for identification 12-A and B.

(Testimony of Kenneth Claus.)

The Clerk: Government's Exhibits 12, 12-A and 12-B for identification.

(Said Memos were marked as Government's Exhibits 12, 12-A and 12-B for identification.)

Q. (By Mr. Eubank): I show you Government's Exhibits 12, 12-A and 12-B for identification, and ask you if those are the memos from your records? A. They are, sir.

Q. And these are in your writing; is that correct?

A. They are, sir. No; wait a minute. My wife wrote this down for me this morning out of my books, because she can write better than I can. These two are my writing, this is my wife's writing. I told her what to write. This is in my books, that date and that amount; yes, sir.

Mr. Eubank: I offer these in evidence.

Mr. Whitney: May I ask a question on voir dire?

The Court: Yes.

Q. (By Mr. Whitney): You keep books of account? [101] A. I beg your pardon?

Q. You keep books of account? Do you keep books for your business?

A. Yes, sir; I keep the books of my business; yes, sir.

Q. Where did you get these? Out of that box, you say?

A. I made them out myself and put them in my box with my other bills, sir.

Q. When did you make them up?

A. At the time I bought the dates.

(Testimony of Kenneth Claus.)

Q. At the time you bought the dates?

A. Yes, sir; all but that one.

Q. You didn't make that one up?

A. I took that one out of my books. I made that up this morning. That was a copy of what was in my books.

Q. Is this your handwriting?

A. That is my wife's handwriting.

Q. She took it out of the books?

A. No; I told her to write it down for me. She writes better than I do. She wrote it for me.

Q. This is in your handwriting?

A. Those two are my handwriting.

Mr. Whitney: I object to it as not the best evidence. Immaterial.

Mr. Eubank: I offer these in evidence as a memorandum, your Honor. [102]

The Court: I am a little confused. Are those the evidence of purchase of Long's dates or Glass dates?

Mr. Eubank: These were testified to as representing the Long date purchase.

The Court: All right, they may be received.

The Clerk: Government's Exhibits 12, 12-A and 12-B in evidence.

(Said Note Paper Memos were received in evidence and marked as Government's Exhibits 12, 12-A and 12-B.)

Q. (By Mr. Eubank): I show you Government's Exhibits 12, 12-A and 12-B in evidence, and

(Testimony of Kenneth Claus.)

ask you to tell the jury what type of dates these memos represent, what dates were purchased?

Mr. Whitney: If the Court pleases, I assume that this memo would show.

The Court: They are supposed to be Long dates, you just told me. What do you want to ask him about it again for?

Mr. Eubank: All right. It is in evidence now. I thought we would have him testify.

The Court: You just told me they show there as evidence of the purchase of Long dates. Why wear these things out?

Mr. Eubank: Okay.

Q. (By Mr. Eubank): Mr. Claus, in your business, what type of stand did you operate during the period that these receipts cover? [103]

A. I operate fruit and vegetable stands like you see along the street, where you sell oranges and grapefruits, and dates, and that type of merchandise.

Q. The particular dates that were covered here that were sold to you by Mr. Moffman, do you recall the price per pound that you paid for these dates?

A. Like I said, I believe it was approximately 12 cents, that is for these in these boxes, 12 cents per pound.

Q. And at another time, did you pay a different price than 12 cents?

A. Like I said, there were three pounds in one box, and that figured like about 16 cents. Three

(Testimony of Kenneth Claus.)

into fifty would be the difference. It was packed in a different type of box.

Q. The receipts we have there, you testify that the dates that you received were in those price ranges, is that correct?

A. Approximately, sir. That is pretty close.

Q. If you were to go to the extreme of the approximate, how far could it possibly be?

A. The ones I bought wouldn't vary maybe, say, from 11 to 13 cents. Otherwise I wouldn't have bought them, because I could buy them at the same price here, Arizona dates.

Q. Did you at any time telephone Mrs. Long, or the Long Date Company? A. I did. [104]

Q. And in regard to that call, did you attempt to contract for dates?

A. I wouldn't put it that way, sir.

Mr. Whitney: What difference does it make? That is completely outside of the indictment. I object to it as immaterial, what he did with Mrs. Long.

The Court: She said somebody called her, and it wasn't the defendant. Maybe it was this witness.

Q. (By Mr. Eubank): What, in the call to Mrs. Long, what arrangement did you attempt to make, if any?

A. Well, if I am allowed, I will tell you in my own words why I called, and what I called for. May I do that?

The Court: I don't know about that.

Mr. Whitney: Just answer the questions, sir.

The Court: Just a minute.

(Testimony of Kenneth Claus.)

The Witness: I am confused. I don't know what you mean.

Q. (By Mr. Eubank): First, did you make a call to Long's A. I did, sir.

Q. Approximately when?

A. Well, as near as I can remember, I believe it was in December of 1954.

Q. And do you recall who you talked to? [105]

A. Well, the person to whom I talked said they were Mrs. Long.

Q. And did you ask about Long dates? What was the purpose of your call?

A. I asked her how much I could buy dates from her for. That was why I called her.

Q. Did you ask for cheap dates, or inexpensive dates?

A. I don't know as I mentioned cheap dates. I asked her the price if I bought a large amount of dates.

Q. What did she say?

A. She said she was getting 45 cents a pound, as near as I can remember.

Q. Did she say where she was getting 45 cents a pound?

A. I don't remember whether or not she said where she was getting that, but she said that was what she was getting, as near as I can remember.

Mr. Whitney: If the court please, that is wholly immaterial.

The Court: I think so. Disregard that. It may be stricken.

(Testimony of Kenneth Claus.)

Q. (By Mr. Eubank): Did she offer to sell you any dates?

A. I don't believe so, because we were arguing about the price.

Q. Did you make any statement as to the price of Long [106] dates?

The Court: I don't think this has anything to do with this lawsuit. I don't believe I would care to hear any more about it.

Q. (By Mr. Eubank): When you purchased these dates from Hoffman, did you have any conversation with Mr. Hoffman as to the place that he was procuring these dates from?

A. Well, other than he said they were California dates, I don't believe that I do. I mean, there may have been some conversation over a period of two years you could forget about. I think the main thing I asked about whether they were Arizona or California, and as near as I can remember, I think he told me they were California dates.

Q. When you placed your call into the Long Date Gardens, did you do that by finding the phone number on one of the boxes of dates, or did you inquire from the telephone company, if you recall?

A. Well, I don't remember how I went around getting that phone number. I do remember the name of the company was on there, so I could have, or it may have been stamped on the box. I don't remember how I got the number, but I got the name of the company off the box.

Q. The price you were buying dates for from

(Testimony of Kenneth Claus.)

Mr. Hoffman at that particular period, the market being what it was, was [107] that a good price for market conditions, or was it an average price in market conditions?

A. What do you mean by good, sir? Good for me or good for the seller?

Q. Good for you?

Mr. Whitney: I object to the question. He said he bought those dates, and he could have got them in Arizona for the same.

Mr. Eubank: All right, no further questions.

Cross-Examination

By Mr. La Prade:

Q. Mr. Claus, is this the same size box of dates that you were buying?

A. Sir, it looks like the same size.

Q. What were you selling them for per box?

A. Let's see now.

Q. Didn't you state one dollar?

A. No, sir; I said a box that had approximately three pounds in it was sold for one dollar by me.

Q. Do you recall what you were getting for this size box?

A. I believe I was selling those boxes there, five of them for a dollar, maybe in the end even six, but I know I sold a lot of them five of them boxes for a dollar.

Q. You say you could get the same quality of date for [108] what per pound here in Arizona?

(Testimony of Kenneth Claus.)

A. I have bought lots of dates in Arizona, and better quality than that, at 10 cents per pound.

Q. You could get them at that price here in Arizona at that time?

A. At that time I wasn't buying in Arizona, I was buying these. But I have bought a lot of them, and I have also bought a lot of California dates at 10 cents or better a pound of the same quality as that.

Q. All right, about the same time as we are discussing here?

A. Right about that time, when there wasn't any more of these.

Mr. La Prade: That is all.

Mr. Eubank: That is all.

(Witness excused.)

The Court: We will suspend until ten in the morning. Keep in mind the Court's admonition.

(Thereupon, an adjournment was taken to 10:00 o'clock a.m. the following day, September 19, 1956.) [109]

September 19, 1956, 10:00 A.M.

The Court: You may proceed.

Mr. Eubank: Mr. Whitney has consented to the release of Mrs. Darling.

The Court: All right, she may be excused.

Mr. Eubank: And we have other witnesses to be sworn.

(Witnesses sworn.)

The Court: You gentlemen will remain out of the courtroom until called.

Mr. Eubank: At this time, I would like to request that a witness be called out of order. This witness is Mr. T. L. Brice. He is supposed to be a key figure at a wholesale grocers' convention, and supposedly has a plane connection at 10:55. [110]

The Court: Better get him in here, then.

Mr. Eubank: Mr. Whitney, do you think we could move this man along fairly fast? He has to make a plane connection.

Mr. Whitney: That would depend a great deal on what he has to say.

Mr. Eubank: All right, I call Mr. T. L. Brice.

T. L. BRICE

called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Ted L. Brice?

A. That is right.

Q. And you are employed by the T. L. Brice Company? A. That is right.

Q. In what capacity are you employed?

A. I am manager of it now.

Q. That is located in Sherman, Texas?

A. That is right.

Q. Do you recall the name of Ben B. Hoffman?

(Testimony of T. L. Brice.)

A. Yes, sir.

Q. Do you recall the name of Ben B. Hoffman Wholesale Grocers? A. Yes, sir.

Q. Do you know the place where that firm was located? [111]

A. Located in Tucson, Arizona.

Q. In regard to that firm, did you have any telephone communication with them?

A. Yes, sir.

Q. Would you please explain first when that telephone call was had?

A. It was on or about May 25th of 1953.

Q. And how did that call identify itself?

A. As Mr. Ben B. Hoffman, as Ben B. Hoffman Wholesale Grocery.

Q. And was the town identified?

A. Yes, sir; it was.

Q. What was the nature of the call? Was it collect, or paid? A. It was collect.

Q. What did Mr. Hoffman say?

Mr. Whitney: I object to it, if the Court please, on the grounds no foundation made for that, and no identification except his statement that he talked to Mr. Hoffman at Tucson.

May I ask him one question on voir dire?

The Court: All right.

Q. (By Mr. Whitney): Did you ever talk to Mr. Hoffman personally, except on the phone?

A. Just on the phone. [112]

The Court: Did he say it was Hoffman?

(Testimony of T. L. Brice.)

The Witness: Yes, sir.

The Court: Go ahead.

Q. (By Mr. Eubank): What did Mr. Hoffman say?

A. He wanted to know if he could buy some pickles, and wanted to know the price of the pickles and the delivery date of them.

Q. In regard to the pickles, what was the price that you quoted?

A. He bought several sizes which varied in price, the different sizes.

I remember one was quarts, and at that time I don't remember what the exact price was on them.

Q. What were the terms?

A. One per cent 10, net eleven.

Q. And what does that mean, for the benefit of the jury?

Mr. Whitney: I would like to have the answer to that last question.

The Witness: One per cent 10, net eleven.

That is to say, within ten days they get 1% cash discount off the invoice. If it isn't paid, the full amount of the invoice is due on the eleventh day.

Q. (By Mr. Eubank): Was this shipment based upon the phone call gotten [113] together by your firm? I mean, was it shipped? A. Yes, sir.

Q. Now, in the conversation with Ben, did you inquire into his business?

A. Yes, sir. Let me clarify this one moment. On the first phone call I did not. There were other

(Testimony of T. L. Brice.)

phone calls which we did inquire about his credit rating, and so forth.

Q. Approximately, these other phone calls, when were they made?

A. The shipment of pickles was made on or about the 8th of June, and it was between approximately the 25th, and the 8th of June, 1953.

Q. The other phone calls, what statements were made at that time by Mr. Hoffman?

A. We asked him in regard to his credit rating if he was listed in Dun and Bradstreet, which he was not.

We asked him to give us some references as to the people he was purchasing from at that time, which he referred to us Eastern Packers. And then we checked at Sherman on two food concerns that distribute their products in this area, if they had heard of Mr. Hoffman, and these people said that he might be the one that purchased James A. Dick Grocery Company, and I called Mr. Hoffman and asked him if he was the one that bought out the Dick Grocery Company, and he informed me he was at that time. [114]

Mr. Eubank: Mark this Government Exhibit 13 for identification.

The Clerk: Government's Exhibit 13 for identification.)

(Said invoice was marked as Government's Exhibit 13 for identification.)

Q. (By Mr. Eubank): I show you plaintiff's

(Testimony of T. L. Brice.)

Exhibit 13 for identification, and ask you if you recognize this document? A. Yes, sir.

Q. How do you recognize the document?

A. This is the invoice that was mailed to Ben B. Hoffman. It was not mailed to Ben B. Hoffman, but it was taken by our truck driver on delivery of his merchandise.

Q. This particular document, could you explain to the jury the technique of your records in regard to a document of this type?

A. Well, this is the invoice which is mailed to a jobber after his pickles are delivered. Now, when our truck delivers pickles to a jobber, he carries a bill of lading, usually.

Now, in this case here, we also sent the invoice along with the bill of lading, because we did not have satisfactory credit rating, and our driver had instructions, if at all possible, to pick up the check. Which was impossible. I don't recall what the excuse Mr. Hoffman gave him from there, therefore, this is the copy that our driver carried with him out [115] here.

Mr. Eubank: I ask that Government's Exhibit 13 be admitted in evidence.

Mr. Whitney: I object to it on the grounds no proper foundation has been laid. It is hearsay.

The Court: It may be received.

(Said invoice was received in evidence and marked as Government's Exhibit 13.)

Q. (By Mr. Eubank): Now, Mr. Brice, refer-

(Testimony of T. L. Brice.)

ring again to Government's Exhibit 13 in evidence, will you tell the jury the amount of the shipment?

A. It was 775 cases, and approximately 2100. Here it is exactly, \$2,138.75. \$2,138.75.

Q. Now, was any part of that money ever collected? A. Yes, sir; \$400 of it was paid.

Q. How did you collect the \$400?

Mr. Whitney: If the Court please, I object to that as immaterial.

The Court: He may answer.

Q. (By Mr. Eubank): In other words, what did you do to collect \$400?

Mr. Whitney: Same objection.

The Court: Same ruling. [116]

Q. (By Mr. Eubank): Go ahead.

A. There were several phone calls requesting Mr. Hoffman to make payment of this invoice, and the one that got the results, the \$400, we told him to either send the money from the invoice, or we would turn it over to our attorney for collection, or pick up the merchandise.

Q. And what did he say to that?

A. He said a check would be in the mail that evening. He didn't say how much.

Q. And did you receive a check?

A. We received a check in a day or so for \$400.

Mr. Whitney: I object to that. It is not the best evidence. I move it be stricken. The check is the best evidence.

The Court: It may stand. He wouldn't have the

(Testimony of T. L. Brice.)

Mr. Eubank: May this be marked as Government's Exhibit 15 for identification?

The Clerk: Government's Exhibit 15 for identification.

(Said Bill of Lading was marked as Government's Exhibit 15 for identification.)

Q. (By Mr. Eubank): Mr. Brice, I show you Government's Exhibit 15 for identification, and ask you if you recognize this document?

A. Yes, sir.

Q. And how do you recognize that document?

A. This is our normal bill of lading that our drivers carry with them to have the buyer or the receiving clerk sign. It is our record that they have received the merchandise.

Q. Can you tell from this whether or not the merchandise was received?

A. Well, on this one, on this particular instance, the invoice and this item went together in order that we may see if we could collect the account at the same time. He signed the invoice instead of this.

Q. Who signed it?

A. Mr. Hoffman signed the invoice instead of this, which was satisfactory with the company.

Mr. Eubank: I ask that plaintiff's Exhibit 15 be admitted in evidence.

Mr. Whitney: May I ask a question on voir dire? [121]

The Court: All right.

Q. (By Mr. Whitney): Mr. Witness, referring

(Testimony of T. L. Brice.)

we called our attorney and placed the whole thing in his hands, told him if the check was not received in whatever time limit was given, I do not recall exactly what time limit, for him to proceed to prosecute him, to sue him on it.

Q. Did you bring with you, Mr. Brice, telephone toll [118] tickets?

A. Yes, sir; I have them in my briefcase.

Q. Will you get them, please?

A. Yes, sir. (Handing documents to counsel.)

Mr. Eubank: Will you mark this as Government's Exhibit 14 for identification.

The Clerk: Government's Exhibit 14 for identification.)

(Said Telephone Bills were marked as Government's Exhibit 14 for identification.)

Q. (By Mr. Eubank): Mr. Brice, I show you Government's Exhibit 14 for identification, and ask you what those documents are.

A. These are telephone bills.

Q. And how were they received?

A. They were received collect, and they show Tucson on here.

Q. What do these calls relate to that you say show Collect?

A. All deals, all phone calls from Mr. Hoffman to us in regard to his pickles, and then the Tucson that is prepaid are calls to him.

Q. And can you identify from these bills the calls that you received from Mr. Hoffman?

(Testimony of T. L. Brice.)

A. Yes, sir; I can. Here is one on the 24th of June, we called Mr. Hoffman in regard to his account.

On August 13th, we called Mr. Hoffman in regard to [119] his account. On the 2nd day of June, we called Mr. Hoffman in regard to his account.

Now, on the 25th of May, Mr. Hoffman called us.

Mr. Whitney: Wait a second here. You mean somebody called you who said he was Mr. Hoffman?

The Witness: That is right.

Mr. Whitney: That is right.

The Witness: It was on the 25th of May.

Q. (By Mr. Eubank): Was that the first call, to your knowledge?

A. That is right, the 25th of May. On June 18th, we called Mr. Hoffman in regard to his account.

Mr. Eubank: I ask that Plaintiff's Exhibit 14 be admitted in evidence.

Mr. Whitney: We object to this, first, on the grounds that the identification of the person calling has not been made.

And, second, on the grounds that as far as I can see from a cursory examination of this exhibit, there is none of these calls that fits the charge in Count XI of the Indictment, which sets the date as May 29th, 1953.

The Court: It may be received.

The Clerk: Government's Exhibit 14 in evidence.

(Said Telephone Bills were received in evidence and marked as Government's Exhibit 14.) [120]

(Testimony of T. L. Brice.)

check. It would go back to the man that made it. How would he have it?

Q. (By Mr. Eubank): Now, did you talk to Mr. Hoffman after receiving that payment?

A. Yes, sir. We had, I don't know if it was one or two, but we had at least one phone conversation with him after that.

Q. And what was the tenor of that phone conversation?

Mr. Whitney: Same objection, on the grounds that no [117] identity has been made yet.

The Court: All right, go ahead.

Mr. Eubank: You may answer.

The Witness: We were trying to get the balance of our account cleared up there, and we told him if it was not paid we would come out and pick up the merchandise and issue a credit for merchandise we picked up, and then he would owe the balance, if there would be any balance at that time.

Q. (By Mr. Eubank): And what did he say to that?

A. He said they were distributed over a several hundred mile area, and he couldn't pick them up there, and he would mail a check, I think that night, or very shortly, mail another check very shortly, and at that time we gave him so many hours to mail another check in, which did not come in.

Q. That check never came in?

A. That is right.

Q. Did you take any action after that?

A. As soon as we finished talking on the phone,

(Testimony of T. L. Brice.)

to Government's Exhibit 15 for identification, what are those rings around there? What do they mean?

A. That is usually the way—I will phrase it, instead of saying usually, that is one way a receiving clerk will check his merchandise off. As he takes it off the truck, he might figure it, he might check it.

Q. The same way with the marks, so many shorts, so many shorts?

A. Our driver has instructions to put that on there.

Q. And this was prepared by your driver?

A. This was prepared by our company at Sherman, and it is carried by our driver. This notation in regard to "shortage of 15 cases" is made by our driver when he unloads the merchandise.

Q. Hoffman had nothing to do with that exhibit?

A. No, sir.

Mr. Whitney: I object to it on the grounds it is improper identification. It is not binding on the defendant.

The Court: It may be received.

(Said Bill of Lading was received in evidence and marked as Government's Exhibit 15.) [122]

Q. (By Mr. Eubank): Your truck shipment, Mr. Brice, will you tell the route it was supposed to have taken?

A. It was a straight load of pickles to Tucson. Our drivers had the instruction to go the nearest route, which I believe would be through El Paso.

(Testimony of T. L. Brice.)

Further than that, their stops on the way I wouldn't know.

Q. And that was from where?

A. The plant in Sherman, Texas.

Q. In Sherman, Texas? A. That is right.

Mr. Eubank: No further questions.

Cross-Examination

By Mr. La Prade:

Q. Mr. Brice, you are not personally acquainted with the defendant in this action, are you, sir?

A. I never have seen him before.

Q. You never have had any direct conversations with him? A. Just over the telephone.

Q. That was merely a representation that it was somebody by the name of Hoffman?

A. That is right.

Q. You don't know whether it was the defendant in this case or not, do you, sir?

A. No, sir.

Q. You don't know him by sight? [123]

A. No, sir.

Q. You don't actually know who you were talking to?

A. Just what I was told, just what they told me over the phone.

Q. You have no knowledge whether the shipment was ever personally received by Mr. Hoffman, other than what somebody else told you?

(Testimony of T. L. Brice.)

A. Other than his signature that you have in your hand.

Q. You don't know his signature when you see it, sir? A. No, sir, I don't.

Q. You wouldn't have the slightest idea?

A. Wait a minute. Backing up a little, I do have some correspondence from Mr. Hoffman with his signature on that. It could be compared with that.

Q. You didn't see the person write on the letter, however, did you, sir? A. No, sir.

Q. This was a credit transaction, wasn't it, Mr. Brice? A. That is right.

Q. And when you didn't collect it, when you couldn't collect it, you turned it over to whom?

A. To our attorney there in Sherman.

Q. And it was purely a civil matter, as far as you were concerned? A. That is right. [124]

Q. Just a matter of another account which had gone bad, as far as you were concerned, is that right? A. That is right.

Q. That was your only interest?

A. That is right.

Q. As a matter of fact, you made an attachment on some other merchandise, didn't you?

A. That is right.

Q. And received your payment in full?

A. We came out about even on it.

Q. After receiving the, I believe it was the \$400 payment? A. That is right.

Q. Was there any other merchandise ordered?

(Testimony of T. L. Brice.)

A. No, sir.

Q. And there was not any other shipped, was there? A. No, sir.

Q. And the \$400 did not lull you into shipping any other merchandise, did it?

A. No, sir, it did not.

Q. This particular merchandise was ordered on what day, sir, do you recall?

A. On or about the 25th of May.

Q. 1953? A. That is right. [125]

Q. And this is the shipping date on Government's Exhibit 13 in evidence?

A. It is on the right-hand side there.

Q. The shipping date would be June 4th?

A. That is right.

Q. A few days later? A. That is right.

Q. And you received payment of the \$400 when, sir?

A. I would estimate about two weeks later.

Q. This is the only order you actually received?

A. That is right.

Q. And none other after you received the check, isn't that right? A. Yes, sir.

Q. With reference to Government's Exhibit 14, Mr. Brice, I will ask you if this is the sum total of all the telephone statements you received for the time in question? A. That is right.

Q. I will ask you to examine those telephone statements, referring to the month of May of 1953, and ask you if there appears thereon that you re-

(Testimony of T. L. Brice.)

ceived any phone calls from Arizona during the month of May?

A. Yes, sir, I got one here in the month of May, on the 25th day of May.

Q. That is the one you referred to on direct examination? [126] A. That is right.

Q. And that refers to the 25th day of May of 1953? A. That is right.

Q. And you did not receive one on the 29th day of May of 1953, did you?

A. It is not on here. No, sir, there isn't one on here for that date.

Mr. La Prade: At this time we move to have the Court review its ruling on Exhibit 14 in evidence, and have it stricken from the record, for the reason it has no connection with this case, and does not refer to any count in the Indictment.

The Court: All right. Motion denied.

Mr. La Prade: That is all.

Redirect Examination

By Mr. Eubank:

Q. In relation to the letters, Mr. Brice, do you have letters received from Ben Hoffman?

A. Yes, sir, right here in my folder.

Q. In what connection were those letters received by you?

A. They were in connection with paying his account.

Q. Would you please remove those letters?

(Testimony of T. L. Brice.)

A. Yes (handing to counsel).

Q. Where is the original, Mr. Brice?

A. The original is in the lawyer's office in Tucson. [127]

Q. Do you have any of the original letters?

A. No, sir. He has the complete file on that.

Q. And all you have are these copies?

A. That is right.

Q. How were these copies made?

Mr. Whitney: I object to this as improper redirect.

The Court: It is not improper, but I don't think the letters are admissible, so you don't have to waste any more time.

Mr. Eubank: No further questions.

The Court: Is that all for this witness?

Mr. La Prade: That is all.

Mr. Eubank: May this witness be excused, Mr. Whitney?

Mr. Whitney: Yes, I will excuse this witness.

(Witness excused.)

Mr. Whitney: If the Court pleases——

The Court: You have stated your objection. I don't want to hear anything about that.

Mr. Whitney: I want to move to strike it.

The Court: Motion denied.

Mr. Whitney: The defendant moves to strike Government's Exhibit 14 in evidence on the grounds that the Indictment in Count XI charges the precise

date to be what it says, on or about the 29th of May, 1953.

The Court: You know that is close enough. It doesn't [128] have to be the exact date.

Mr. Whitney: In the mail fraud statute, the date has to be precise as to the gist of the offense.

The Court: All right, motion denied.

Mr. Eubank: At this time the Government would like to strike one of the counts of the Indictment, the Poletti Sausage count.

The Court: You want to dismiss that count?

Mr. Eubank: Yes.

The Court: Which one is it? What is the number?

Mr. Eubank: Number VI.

The Court: All right, that count will be dismissed.

Mr. Eubank: Mr. Poletti is having a heart operation in San Francisco, and couldn't appear.

The Court: All right.

Mr. Eubank: For our next witness, I will call Henry Leppla.

HENRY LEPPLA

called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Mr. Henry Leppla?

A. Yes.

Q. That is spelled L-a-p-p-l-a?

(Testimony of Henry Leppla.)

A. L-e-p-p-l-a. [129]

Q. And you are the owner of the Mesa Transfer and Storage company? A. That is right.

Q. At 254 South Pomeroy in Mesa, Arizona?

A. Right.

Q. Mr. Leppla, how long have you been in the transfer business? A. Going on four years.

Q. How long have you been in possession of the Mesa Transfer and Storage?

A. Well, that is how long I have operated as Mesa Transfer and Storage.

Q. Do you recognize the name of Ben B. Hoffman? A. Yes, sir.

Q. Do you recognize the name of Acme Distributing Company? A. Yes.

Q. Do you see Mr. Hoffman in this room?

A. I sure do.

Q. Will you point him out to the jury?

A. In the brown suit back there.

Q. How do you know Mr. Hoffman?

A. Mr. Hoffman stored various items with me, starting late in 1953. I believe that was November of 1953, he stored various items there, and he had office space from us there approximately two months in April and May of 1954. [130]

Q. Now, on the office space, what did he pay you a month for that?

A. The first month was \$40, and the second month was supposed to have been \$30.

Q. Now, in regard to the office set-up, how was that located in your building?

(Testimony of Henry Leppla.)

A. Well, it was at that time an adjoining office, had an adjoining door, and also it had an entrance through the main portion of the warehouse.

Q. While he was in possession of that office, did you at certain intervals go into the office?

A. Well, when he was—yes, it was an adjoining office, and the door was open for a short time at first, and of course there was a louver between the doors, so I more or less could hear what went on.

Q. Will you tell the jury what type of fixtures were in the office?

A. There was, I think, two desks, and it was just a very small office.

Q. Were there any filing cabinets?

A. No, there didn't seem to be hardly anything in there.

Q. Was there a typewriter?

A. I don't believe he had a typewriter.

Q. Was there a telephone?

A. Yes, I had a telephone installed in there for him. [131]

Q. With regard to the office, were there any employees that worked for Mr. Hoffman?

A. No, not directly. We did deliver a few things for him that were stored.

Q. Did he have anyone working in the office for him? A. No, not when he was there.

Q. Were there any books or records, to your knowledge, stored in the office?

A. Not a thing.

(Testimony of Henry Leppla.)

Q. How much time did Mr. Hoffman spend at this office?

A. Well, the first month when he was in the office, he was in there quite a little bit. I would say two or three hours during the day, sometimes, and later on, you might say the second month, he wasn't in there hardly at all.

Q. Did you ever overhear any conversations that Mr. Hoffman had?

A. Yes, due to the location of the office, it was a little hard not to.

Q. Did you ever hear any conversations had by Mr. Hoffman over the telephone?

A. Yes, I heard a good deal of them.

Q. Could you tell the nature of those calls?

A. Yes, they were all very much the same. I don't recall the companies that he was talking to, although the names were mentioned. [132]

Q. How was the call placed? Was it prepaid or collect?

A. It was almost always collect.

Q. And who were the general types of people he would call?

A. Well, wholesalers, usually, perhaps Los Angeles or San Francisco, or, in other words, it was a long ways off. It was always far across the country.

Q. You didn't hear him, to your knowledge, or to your recollection, you didn't hear him place any collect local calls?

A. No, not to my knowledge, locally.

(Testimony of Henry Leppla.)

Q. Now, was there a pattern to the information that he would give these people?

A. Yes, there was.

Q. What was the nature of that information?

A. Well, he would generally open up the conversation and say, "This is Ben Hoffman of the Acme Distributing Company."

And then he would say—of course, I wouldn't hear what was going on at the other end, and he would say, "What do you have today," in some specific line, and they would answer him, and he would ask the prices, and he would dicker a short time on the price. Then he would say, "Oh, send me a dozen cases of this, three dozen cases of that," what you might consider a medium sized order, not small.

And he would say, "Put that on regular terms," or something to that effect. And the conversation was generally [133] that, most every time he called, and it was usually Collect.

Q. Could you estimate how many times you overheard that type of conversation?

A. Well, a couple of dozen times. It was quite considerable.

Q. Back to the office, when he moved out of there, was there any paraphernalia left in the office?

A. Hardly anything. The only thing left in there was a Los Angeles yellow page telephone book.

Q. Did you ever see him using the telephone book, I mean that particular one you described?

(Testimony of Henry Leppla.)

A. I would say that he probably used it. I don't recall necessarily seeing him.

Q. In other words, your answer would be that you didn't?

A. I know he used it. I don't recall seeing him do it.

Q. While Mr. Hoffman was in occupation of the office space, did he have many business callers, that you know of, that you talked to?

A. Oh, very few, very few. He did have a few telephone calls. When he wasn't there, I told my secretary to give him the message, which we did a number of times.

Q. Were any inquiries made about Mr. Hoffman?

A. Well, yes, there were a few. The local bank.

Q. When you were negotiating with Mr. Hoffman, or he was negotiating with you for the office space, did he make any [134] statements concerning his operation, or what he intended to do?

A. Well, yes, he said he was the Acme Distributing Company, and that he sold to various people, and, of course, we had had his storage in there earlier, and at least we thought we knew the nature of his business.

He had some, oh, fruit cakes, and various mixed fruit packages that he shipped out prior to Christmas late in 1953.

Q. Did he relate any of his past business experience to you? A. No.

Q. That you recall? A. Not to speak of.
Mr. Eubank: No further questions.

(Testimony of Henry Leppla.)

Cross-Examination

By Mr. La Prade:

Q. Did you own the building? A. Yes.

Q. You rented the quarters to Mr. Hoffman?

A. Yes, I did.

Q. And it had some furniture in it when you rented it to him?

A. Oh, yes, we store furniture, mostly.

Q. That is the furniture he would use?

A. When you say furniture, I thought you meant customers' furniture. [135]

Q. You rented an office, and it had some furniture in it? A. Yes, it had two wooden desks.

Q. That is what he used when he was in possession of the premises?

A. Yes, approximately two wooden desks.

Q. How did it happen you were listening in on his phone conversations? You had adjacent offices?

A. Yes. Mr. Hoffman has a very loud and clear voice, and there is a louver in the door that we have for heating and cooling purposes. We did try to give him as much privacy as possible, but you couldn't help overhear his voice.

Q. Did you make some shipments for him locally?

A. Yes, we made some shipments for him locally.

Q. To different merchants locally?

A. Yes, I have a record here of all our transactions.

(Testimony of Henry Leppla.)

Q. And you could tell from having made deliveries for him, and having overheard these conversations, that he was in business?

A. Oh, yes, I knew he was in business.

Mr. La Prade: That is all.

Redirect Examination

By Mr. Eubank:

Q. Mr. Leppla, did you say you had your company records of the shipments you made for Mr. Hoffman?

A. Yes, I have all records of all transactions with [136] Mr. Hoffman, as Acme Distributing Company, right here.

Q. And you also have copies of receipts of the payments that he made for rent?

A. Yes, mostly my receipts. They were mostly in cash, and so forth.

Q. And your company records, are those the records of your company in relation to those?

A. Yes, I copied these directly off of our original invoices, and these are definitely the records of our company.

Q. When did you copy those off?

A. My wife copied them here just a few days ago.

Mr. Whitney: What was that last answer?

The Witness: My wife copied them just a few days ago before I came into court, and to my knowledge they are correct. They look correct.

(Testimony of Henry Leppla.)

Q. (By Mr. Eubank): Did you compare the original entries with this?

A. Yes, these are from our original tickets.

Q. And they constitute a more or less memorandum, they are more or less a memorandum of the transaction?

A. Yes, more or less a recap.

Mr. La Prade: If the court please, that is not——

The Court: Don't waste any more time with that, because they aren't admissible.

Mr. Eubank: No further questions. [137]

The Court: That will be all.

Mr. Eubank: May this witness be excused?

Mr. Whitney: Yes.

The Court: Yes.

(Witness excused.)

Mr. Eubank: I call Mr. Herman Crede.

HERMAN CREDE

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Herman Crede?

A. Right.

Q. That is C-r-e-d-e? A. That is right.

Q. And you are the vice president of C. A. Glass Company?

A. Yes, sir.

Q. And your offices are located at 735 East

(Testimony of Herman Crede.)

Fourth Street? A. Yes, sir.

Q. In Los Angeles, California?

A. Yes, sir.

Q. And you are the packers and distributors of a type of date? A. Yes.

Q. Would you tell the jury the name of the date? [138] A. Gold Cup brand.

Mr. Eubank: Mark this as Government's Exhibit 16 for identification.

The Clerk: Government's Exhibit 16 for identification.

Mr. Eubank: And this as Government's Exhibit 17 for identification.

The Clerk: Government's Exhibit 17 for identification.

(Said packages of dates were marked as Government's Exhibits 16 and 17, respectively, for identification.)

Q. (By Mr. Eubank): Mr. Crede, I show you Government's Exhibits 16 and 17 for identification, and ask you if you recognize these boxes?

A. Yes, I do. They are ours.

Q. In reference to Government's Exhibit 16, will you tell how you recognize that as yours?

A. We have this brand. This is our exclusive brand.

Q. What above the cover of it?

A. Yes, this is our package.

Q. Now, about Government's Exhibit 17 for identification, how do you identify that?

(Testimony of Herman Crede.)

A. This is our package. This is our brand, and our package which was packed at that time.

Mr. Eubank: I offer Government's 16 and 17 in evidence.

Mr. Whitney: We object on the grounds no foundation made for introduction. [139]

The Court: No, there isn't.

Mr. Eubank: These will be connected up later.

The Court: All right, when they are connected up, they will be received.

Q. (By Mr. Eubank): Now, Mr. Crede, do you recognize the name of Acme Distributing Company?

A. Yes, sir.

Q. Do you recognize the name of Ben B. Hoffman?

A. Yes, sir.

Q. And in what particulars do you recognize the names?

A. The merchandise was shipped under Acme Distributing.

Q. What merchandise?

A. The dates that were shipped.

Q. In regard to the shipments made, how was the contract formulated? Was it by actually talking to the person that was Acme Distributing Company?

A. Yes, sir.

Q. How did that take place?

A. On a collect telephone call.

Mr. Whitney: Wait a minute. With you?

The Witness: The first call was with John Glass, and the other five were with me.

Q. (By Mr. Eubank): With relation to the calls

(Testimony of Herman Crede.)

to Mr. Glass, was there a [140] shipment made in regard to that call?

Mr. Whitney: I object to that as hearsay as to the defendant.

The Court: He would know whether there was a shipment made.

The Witness: The first call was taken by Mr. John Glass, who took the order, and gave it to me, wrote it on a piece of paper. I take charge of all the shipments, and he gave me the slip and said, "Ship this to Acme Distributing Company," which we did, which I saw that it was taken care of.

Q. (By Mr. Eubank): On this first shipment, do you recall approximately when that was made?

A. Well, I have the ledger sheet here. I could tell here. I have some memos here.

Mr. Eubank: Would you mark this as Government's Exhibit 18 for identification?

The Clerk: Government's Exhibit 18 for identification.

(Said Ledger Sheet was marked as Government's Exhibit 18 for identification.)

Q. (By Mr. Eubank): I show you Government's Exhibit 18 for identification and ask you if you recognize this sheet?

A. Yes, it is in my writing. [141]

Q. What does the sheet represent?

A. Well, on October 11th, there was a shipment made——

Q. I mean the document itself.

(Testimony of Herman Crede.)

A. This is our Accounts Receivable Sheet.

Q. And that comes out of what book?

A. Out of our Accounts Receivable Ledger.

Q. When are those accounts entered on this sheet?

A. Generally on the day the sale is made, our postings are made daily.

Q. With regard to this particular sheet, was that the case, to your knowledge?

A. Yes, I would say all the postings on this sheet were made on the day this was made.

Mr. La Prade: May I ask a question on voir dire?

The Court: Go ahead.

Q. (By Mr. La Prade): Was this particular piece of paper just a copy of what you had in your Ledger Sheets? A. It is the original record.

The Court: He just said it was the original.

Mr. La Prade: I didn't hear him.

Mr. Eubank: I offer Government's Exhibit 18 in evidence.

Mr. Whitney: I would like to ask a question on voir dire.

The Court: We will have our morning recess at this time.

(The morning recess was had.) [142]

The Court: You may continue.

Mr. Whitney: I have a question on voir dire.

The Court: All right.

Q. (By Mr. Whitney): Mr. Witness, referring

(Testimony of Herman Crede.)

to Government's Exhibit 18 for identification, these items of October 11, 1954, for two ninety-one, who was that phone call to, if you know? That was not to you, was it? A. That was to John Glass.

Mr. Whitney: If the Court pleases, we object to this upon the grounds that no proper foundation is laid for its identification. It is hearsay, and not binding on the defendant for this reason. The Bill of Particulars in which we ask them to state the names of the persons he talked to names in this count John L. Glass. If you will refer to page two of the Bill of Particulars; so that there is no proper identification, and no foundation at all laid for that exhibit.

The Court: There was only one call, evidently. That is all you had in mind when you gave him the Bill of Particulars, that was the call to Mr. Glass? How is the other admissible?

Mr. Eubank: The other is admissible, sir, to show the circumstances that the dates were shipped, and in due course of business this gentleman here, as the vice president of the company, can testify as to the terms and succeeding telephone calls with Acme Distributing Company and Ben Hoffman. [143]

The Court: That is what you say. Now, what is your authority for that? You say here, "included also food and food products ordered by the defendant, and the names of the persons who received the telephonic communication."

Mr. Eubank: Is that in the Bill of Particulars?

(Testimony of Herman Crede.)

The Court: Yes. You are bound by your Bill of Particulars.

Mr. Eubank: That is correct, sir.

The Court: No question about that. So you probably would be confined to that one call to Mr. Glass.

Mr. Eubank: Confined to proving that one call?

The Court: Yes, which he has testified to.

Mr. Eubank: Can we prove by circumstantial evidence that the shipments did occur?

The Court: You might be able to show what was shipped. I don't know. I will let you do that. Go ahead.

But no telephone communication evidence other than Mr. Glass.

Mr. Eubank: Can we put in evidence the bills paid by the company?

The Court: I will let you show what was shipped to Mr. Hoffman.

Mr. Eubank: What was shipped. All right, sir. Then we offer Government's Exhibit 18 for identification into evidence.

Mr. Whitney: I object to it on the grounds there is no [144] foundation laid for it, hearsay, not binding on the defendant, fails to meet the Bill of Particulars.

The Court: Is that one of the records of your company that was kept in the regular order of business?

The Witness: Yes, sir.

(Testimony of Herman Crede.)

The Court: It is the regular order of business to keep these?

The Witness: Yes, sir.

The Court: All right, it may be received.

The Clerk: Government's Exhibit 18 in evidence.

(Said Accounts Receivable Ledger Sheet was received in evidence and marked as Government's Exhibit 18.)

Q. (By Mr. Eubank): I show you Government's Exhibit 18 in evidence and ask you, referring to that, can you tell the shipments that were made to the Acme Distributing Company, and the amounts of the charges made?

A. Yes, each one of these dates has the bill number, the type of dates, the quantity that was shipped, the amount of the invoice.

Q. When was the first shipment made?

A. October 11th, 1954.

Q. When was the last shipment?

A. November 16th.

Q. How many shipments were made in between the 11th and [145] November 16th? A. Five.

Q. What was the total balance due before any payment was made? A. \$1,146.40.

Q. Then a payment was received, is that correct? A. Yes, sir.

Q. What was the amount of that payment?

A. \$200.

Q. Was there a shipment, or subsequent shipments to the payment by Mr. Hoffman of the \$200?

(Testimony of Herman Crede.)

A. Yes, there were three shipments made after the payment was received.

Q. Now, in regard to the payment, did you receive the payments yourself? A. Yes, sir.

Q. Did you order the subsequent shipments to be made? A. Yes.

Mr. Eubank: Would you mark this as Exhibit 19 for identification?

The Clerk: Government's Exhibit 19 for identification.

(Said invoices were marked as Government's Exhibit 19 for identification.)

Q. (By Mr. Eubank): I show you Government's Exhibit 19 for identification, [146] and ask you if you recognize these documents.

A. Yes, sir. All but one in my handwriting.

Q. What are those documents?

A. These are invoices.

Q. How are invoices used in your company?

A. Well, everything that is shipped is billed on this invoice. These invoices here are all made to Acme Distributing. They were delivered to Watson Brothers Transportation for delivery on to Acme Distributing at 818 Apache Blvd., in Tempe, Arizona.

Q. And where are these kept in the records of your company? A. In our files.

Q. And are these the originals, or copies?

A. These are the originals.

Q. What happens to the copies?

(Testimony of Herman Crede.)

A. Well, we have a tissue copy which we keep in numerical order, and the copy goes with the shipment.

Q. And that would have gone to——

A. Gone to Watson Brothers Transportation.

Mr. Eubank: I ask that Government's Exhibit 19 for identification be admitted in evidence.

Mr. Whitney: Same objection as to 18, if the Court please.

The Court: All right, same ruling.

Mr. Whitney: There is no foundation for this under the [147] charging indictment, or under the Bill of Particulars.

The Court: All right, it may be received.

(Said Invoices were received in evidence and marked as Government's Exhibit 19.)

Mr. Eubank: May I clarify one point, your Honor. Can this gentleman testify to the conversations he had with Ben Hoffman?

The Court: Over the telephone?

Mr. Eubank: Yes, sir.

The Court: You didn't recite that in your Bill of Particulars.

Mr. Eubank: All right.

The Court: That is what they wanted you to show, and you didn't do it.

Q. (By Mr. Eubank): Mr. Crede, Government's Exhibit 18 in evidence shows that \$200 was received on November 2nd——

(Testimony of Herman Crede.)

Mr. Whitney: If the Court please, the exhibit is in evidence and speaks for itself.

The Court: All right, go ahead.

Q. (By Mr. Eubank): —and a shipment was made on November 2nd. Is there any reason for that?

A. Well, the man made a payment on account, and ordered merchandise. He was slow in his payments, but over the phone [148] it was stated that his accounts were slow in coming in.

Mr. Whitney: I object to the phone business, unless it is telling who he spoke to.

The Witness: I spoke to Mr. Hoffman.

The Court: Forget about the telephone.

The Witness: There he is right there (indicating).

The Court: He doesn't have to testify about that.

Mr. Eubank: Just about the shipment.

The Witness: The shipment was made in good faith, that he had made a payment on account. We assumed that he was honest.

Mr. La Prade: Your Honor, may that be stricken from the record?

The Court: Yes.

Q. (By Mr. Eubank): The last shipment was made on the 16th of November. Do you know the reason why no subsequent shipments were made?

A. Each time I talked to him, he advised me that payment was in the mail. He talked to someone in his office.

(Testimony of Herman Crede.)

Q. Continue.

A. In other words, he was talking to someone in the office, like there had been an oversight, that the check had gone out.

Q. After November 16th, was there any other factor of why no more shipments were made?

A. We called, and there was nothing there. He was gone. [149]

Mr. Eubank: If the Court please, may this witness stand aside so we can identify the payment of the \$200?

The Court: All right. That will be all for the moment.

(Witness withdrawn.)

GERALD HARDING

called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Gerald Harding?

A. Right.

Q. And you are the Chief Clerk of the First Phoenix Branch of the First National Bank of Arizona?

A. Yes.

Q. And that is what street, what is the street location?

A. Our post office address is One East Washington.

Q. You are here under a subpoena duces tecum,

(Testimony of Gerald Harding.)

is that correct? A. Yes, I believe. Yes.

Q. Did you bring the documents that we subpoenaed you for? A. Yes.

Mr. Eubank: Would you mark this as Plaintiff's Exhibits 20 and 21, for identification.

The Clerk: Government's Exhibits 20 and 21 for identification.

The Clerk: Government's Exhibits 20 and 21 for identification.

(Said Bank Money Orders were marked as Government's Exhibits 20 and 21 for identification.) [150]

Q. (By Mr. Eubank): Would you tell the Court your Bank's procedure on issuing bank money orders?

A. We have an application, we issue the money order for the application.

Q. And the person comes up to the booth, and what happens then?

A. If you were a customer to come to the bank to purchase the money order, you would go to our collection department and state you wanted a money order payable to a certain party for a certain sum. We would fill out the application for you, sign it, make up the money order, accept the payment, keep the application, and give the money order to the purchaser.

Q. I show you Government's Exhibit 21 for identification, and ask you if you recognize that document? A. Yes.

(Testimony of Gerald Harding.)

Q. How do you recognize the document?

A. Because I secured it from the bank records this morning.

Q. How are those kept in your bank?

A. These applications are kept daily, by year.

Q. How long are they kept, approximately?

A. Just offhand, I don't know offhand, but I would say five years for these applications.

Q. Now, this particular application, is that signed by [151] the person that purchased the money order? A. No, it is not.

Q. In that case, is it?

A. In this case, I don't know this signature here, but just looking at it, I think that one of our bank officers purchased it. I am not sure. I can't identify it.

Q. I show you Government's Exhibit for identification Number 20, and ask you if you recognize that document?

A. Yes, I recognize this one, too.

Q. What is the document?

A. This is a bank money order.

Q. In what bank?

A. It is on our branch.

Q. How are these cancelled money orders kept by your bank?

A. These are kept by this number here, numerically, by this number.

Q. How long are they kept?

A. These are kept indefinitely. I don't believe they are ever destroyed.

(Testimony of Gerald Harding.)

Q. This is the item, is that issued on the basis of this?

A. Yes, this on the order of that. That application was made, and this money order backs that application.

Mr. Eubank: I ask that Government's Exhibits 20 and 21 be admitted in evidence.

Mr. Whitney: If the Court please, the only objection I [152] have to this is that there is no foundation laid for the introduction.

The Court: I don't even know what it is. Let me see it.

Mr. La Prade: In addition, we will object to its introduction, because they have not been identified as having been purchased by the defendant.

Mr. Eubank: We will be able to prove, I believe, that they came——

The Court: If you want to prove that this is the defendant's signature on here, you can do that later.

Mr. Eubank: That is right, sir.

The Court: I will sustain the objection at this time. I don't know who signed it. Nobody knows who signed it.

Mr. Eubank: May it be admitted on condition it is connected up?

The Court: No, it will be received when you show it is his signature.

Mr. Eubank: All right, sir. No further questions.

(Testimony of Gerald Harding.)

The Court: Are you familiar with the defendant's signature?

The Witness: No, not at this time, I am not, sir.

Mr. Eubank: May this witness be excused permanently?

Mr. Whitney: I think so.

The Court: That is all.

(Witness excused.)

Mr. Eubank: At this time, I recall Herman Crede to the stand. [153]

HERMAN CREDE

resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Eubank:

Q. Mr. Crede, I show you Government's Exhibit 20 for identification, and ask you if you recognize that document? A. Yes, sir.

Q. What is the document?

A. This is a bank money order for \$200.

Mr. Whitney: Wait a minute. It is a money order.

Q. (By Mr. Eubank): How do you recognize the document? A. What do you mean by that?

Q. There must be something on this instrument that you are able to recognize it by.

A. On the back it is stated: "Pay to the order

(Testimony of Herman Crede.)

of California Bank, C. A. Glass Company, C. A. Glass Company, Incorporated.”

Q. That is your stamp?

A. That is our stamp.

Q. Did you put the stamp on that particular check? A. Yes, sir.

Mr. Eubank: At this time I will offer Government's Exhibit 20 in evidence. [154]

Mr. Whitney: There is still no evidence, if the Court please, to connect that up.

Mr. Eubank: To show the payment.

The Court: That document may be received, but not the application, without further proof.

The Clerk: Government's Exhibit 20 in evidence.

(Said Bank Money Order was received in evidence and marked as Government's Exhibit 20.)

Q. (By Mr. Eubank): Now, in regard to Government's Exhibit 20 in evidence, Mr. Crede, is this the entry that you made on November 2nd?

A. Yes, sir; that is the payment that was received.

Q. Also, is this the only payment that you received in regard to this account sheet?

A. Yes, sir.

Mr. Eubank: No further questions.

(Testimony of Herman Crede.)

Cross-Examination

By Mr. Whitney:

Q. Mr. Witness, all of these items on Government's Exhibit 18 are dates, aren't they?

A. Yes, all dates.

Q. Pardon?

A. All dates, or date confection.

Q. And this was sold in the ordinary course of the Glass Company business? [155]

A. Yes, sir.

Q. On credit? A. Yes, sir.

Q. And you were not paid?

A. We were not paid in full.

Q. I see. When did you cease doing business with the Acme Distributing Company?

A. After the date of the last invoice.

Q. Pardon me?

A. After the date of the last invoice on that ledger card.

Q. And that would be on November 16th?

A. If that is the date of the last invoice.

Q. 1954, is that right? A. Yes.

Q. And you never tried to sell him anything after that? A. No, sir.

Q. Pardon?

A. We never tried to sell him. He tried to buy from us.

(Testimony of Herman Crede.)

Q. In other words, you never at any time asked for other orders from Mr. Hoffman?

A. No, sir.

Mr. Whitney: May this be marked for identification?

The Clerk: Defendant's Exhibit A for identification.

(Said letter was marked as Defendant's Exhibit A for identification.) [156]

Q. (By Mr. Whitney): How long, Mr. Witness, have you been with C. A. Glass Company?

A. Since 1931.

Q. I see. Of course, you are well acquainted with Mr. Glass?

A. Yes. This is Mr. C. A. Glass' son.

Q. And you know his signature? A. Yes.

Q. Is that the signature of Mr. Glass?

A. It doesn't look like it.

Q. Is that Mr. C. A. Glass & Company's letter-head? A. Yes, sir. I can explain that letter.

Q. I understand. That isn't the question. Is that Mr. Glass' signature?

A. No, it doesn't look like it.

Q. Does it look anywhere like it?

A. No, it doesn't. He never writes down. It is capital J.

Q. Have you got any signatures of Mr. Glass with you? A. No, I haven't.

Q. Was that sent out by the C. A. Glass, Inc.?

A. Yes. I remember this letter.

(Testimony of Herman Crede.)

Q. And did you sign it for Mr. Glass?

A. No, it is not my signature. [157]

Q. Was it sent with Mr. Glass' knowledge?

A. Yes.

Mr. Whitney: We offer it.

Mr. Eubank: We have no objection, your Honor.

The Court: It may be received.

The Clerk: Defendant's Exhibit A in evidence.

(Said letter was received in evidence and marked as Defendant's Exhibit A.)

Mr. Whitney: If the Court please, I will read this to the jury.

(Thereupon, Defendant's Exhibit A in evidence was read to the jury by Mr. Whitney.)

Q. (By Mr. Whitney): As I understood it, you didn't know of your own personal knowledge about the first phone call that you mentioned of October 11, 1954. Was that with you?

A. You are speaking of the first phone call?

Q. Well, the phone call on October 11th, 1954, was there a phone call on or about that time?

A. Is that the date of the first shipment?

Q. Pardon?

A. Is that the date of the first shipment?

Q. You have no personal knowledge of that?

A. Not the exact date. I'll tell you. Yes, October 11th.

Q. Would it help you by referring to Govern-

(Testimony of Herman Crede.)

ment's Exhibit [158] 18 in evidence, the bill for these dates and date products?

A. Yes, on October 11, we received a phone call. My office is there, his is there (indicating). I heard him talk to him. I heard him give him the dope for the shipment.

Q. You didn't talk to him yourself?

A. I couldn't swear to it, but I answered the call myself, and the call was for Mr. John Glass.

Q. And you put Mr. Glass on the phone?

A. That is right.

Q. But you don't know anything about who was on the other end of the phone except from what was said, is that right?

A. Except he gave me an order after the phone call for the Acme Distributing Company.

Mr. Whitney: I move to strike all the exhibits, and I move to strike all the evidence with reference to this gentleman, and the exhibits, on the grounds that it doesn't meet the indictment or the Bill of Particulars.

The Court: Motion denied: Is that all from this witness?

Redirect Examination

By Mr. Eubank:

Q. Mr. Crede, were there any other Gold Cup dates in Phoenix at the time that these shipments were made?

Mr. La Prade: That is improper redirect. I object to it. [159]

(Testimony of Herman Crede.)

The Court: Oh, go ahead.

The Witness: That would be hard to say. I don't believe so. We sell to quite a few people, truckers, and so forth. I don't know if any were distributed in the area or not. I doubt it very much.

Q. (By Mr. Eubank): You can't testify?

A. No.

Q. Were any shipments made to Phoenix docks to your knowledge? A. Not that I recall.

Q. In regard to the letter, defendant's Exhibit A, do you have any explanation of this letter that was addressed to Acme Distributing Company?

A. Yes, I do. This was sent out in order to try and get a line upon him. We were hoping he would acknowledge it, because there was no answer to the telephone calls at this address. We were hoping there was some forwarding, or some means we could get in touch with him, at which time we intended to send our collector.

Q. Did he answer this particular letter?

A. Nothing.

Mr. Eubank: No further questions.

Recross-Examination

By Mr. Whitney:

Q. In other words, it was just a trap, and you were trying to collect?

A. A trap to catch a crook.

Mr. Whitney: That is all.

The Court: Is that all from this witness?

Mr. Eubank: No further questions.

(Witness excused.)

Mr. Eubank: I call Duncan McRuer.

DUNCAN McRUER

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Duncan McRuer?

A. That is right.

Q. And you are manager of Watson Brothers
Trucking Company here in Phoenix?

A. Yes, Watson Brothers Transportation.

Q. And you testified yesterday to Long's dates,
is that correct? A. That is right.

Q. I would like to show you an exhibit put in
at that time, Government's Exhibits 8 through 18.

Mr. McRuer, you were subpoenaed to bring with
you [161] records in regard to shipments received
on your dock from C. A. Glass Company in Los
Angeles, California, is that correct?

A. That is correct.

Q. And I show you Government's Exhibits 8,
3-A, 8-B, 8-C, 8-D, 8-I, 8-R, and ask if you recog-
nize them.

A. Yes, those are Watson Brothers freight bills
covering shipments from the C. A. Glass Company
of Los Angeles, to the Acme Distributing Company
of Tempe, Arizona.

(Testimony of Duncan McRuer.)

Q. Will you look at each of those and see if each of those are all of that same type? Take 8, first.

A. 8 is a shipment. 8-A, 8-B, 8-C, 8-D, 8-1, 8-R. I might mention here 8-R is shown as shipped from the California Dates & Vegetable Company, which I understand is the shipping name of the C. A. Glass Company.

Q. All right. You testified to the course in which the records are kept by your company. Would you just refresh the minds of the jury as to just what the document is, and how your company keeps those, how you keep it in your office?

A. Three copies of a bill of lading are issued at the time the shipment is picked up, and the shipper gets two copies, the original and the memorandum, and the trucking company gets the middle copy, called the Shipping Order.

The shipping Order goes with the truck driver back to our office, where we type off the information shown, such [162] as the shipper, who it goes to, the weight, the number of pieces, and so forth, and that bill of lading goes into our file, and this freight bill goes with the truck that hauls the shipment from Phoenix, six copies.

Q. Are these copies kept in your office?

A. These are delivered to the customer, and he is required to sign three copies, one for Omaha General Office, one for the Phoenix Office, and one for us to return to him when we bill him for the

(Testimony of Duncan McRuer.)

freight, to show his accounting department it has been delivered out the back door.

Mr. Eubank: I ask that Government's Exhibits 8-A, B, C, D, I, and R be admitted in evidence.

Mr. Whitney: The only objection is no foundation laid, and not binding on the defendant, in view of the testimony of the gentleman in connection with the Glass Company who has just testified, and not meeting any count here of the indictment.

The Court: Objection overruled. They may be received.

The Clerk: Government's Exhibits 8, 8-A, 8-B, 8-C, 8-D, 8-I, and 8-R in evidence.

(Said Freight Bills were received in evidence and marked as Government's Exhibits 8, 8-A, 8-B, 8-C, 8-D, 8-I and 8-R.)

Q. (By Mr. Eubanks): Now, Mr. McRuer, I show you the exhibits that the [163] clerk has just named as Government's Exhibits 8, and 8-A, through R in this case, in evidence, and ask you if you can recognize who the receiver of that shipment is?

A. I believe that that is the signature of Ben Hoffman, Acme Distributing Company, per Ben Hoffman.

Q. I believe you identified Mr. Hoffman yesterday, is that correct?

A. Yes, I have known Mr. Hoffman for approximately six years.

Q. And you recognize his signature?

(Testimony of Duncan McRuer.)

A. I recognize his signature. In certain cases, I personally saw him sign the freight bills.

Q. Will you go through them there? We will enunciate the number of each exhibit, and you tell me if that was signed by Ben Hoffman.

Government's Exhibit in evidence 8.

A. No. 8, Exhibit 8 is signed——

Mr. Whitney: If the Court please, the exhibits speak for themselves. They are in evidence.

The Court: His signature doesn't speak for itself. They have to prove the signature, unless you want to admit it. Do you want to? Do you want to admit that that is the defendant's signature?

Mr. Whitney: May I ask a question on voir dire?

The Court: Right now. [164]

Mr. Whitney: If the Court please, I move to strike it.

The Court: Go ahead.

The Witness: 8 is signed by Acme Distributing Company, per Ben Hoffman.

Q. (By Mr. Eubank): That is his signature?

A. Yes.

Q. And 8-A?

A. 8-A is signed by Acme Distributing Company, per Ben Hoffman.

Q. That is his signature?

A. That is his signature.

Q. And 8-B?

A. 8-B is signed by Acme Distributing Company, per B. H., and the large "B. H." is characteristic of his signature.

(Testimony of Duncan McRuer.)

Knowing Mr. Hoffman, we insisted on his signing Acme Distributing Company per him personally, and this is a slipup, when he got away with just signing "B. H."

Q. Now, 8-C?

A. 8-C, Acme Distributing Company, per B. Hoffman. 8-D, Acme Distributing Company, per "B. H."

Q. Is that his, that is his signature?

A. That is his signature, the large "B. H."

Q. And 8-I? [165]

A. 8-I, Acme Distributing Company, per Ben Hoffman. That is his signature.

Acme Distributing Company, per Ben Hoffman. This is the only signature that isn't completely characteristic of the other signatures. I believe that is his signature, but it is a little bit smaller than usual.

Q. 8-R, you wouldn't testify definitely was his signature?

A. No, I couldn't say for sure that is Ben Hoffman's signature.

Q. In all of the exhibits we have enunciated, except 8-R, you would say they were Ben Hoffman's signature?

A. Very definitely.

Mr. Eubank: No further questions.

Mr. Whitney: That is all.

Mr. Eubank: May this witness be excused?

Mr. Whitney: Oh, yes.

(Witness excused.)

Mr. Eubank: I call Mr. Floyd Bishop.

FLOYD BISHOP

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Floyd Bishop? [166]

A. Yes.

Q. And you have operated the B & B Fruit
Stand? A. Yes.

Q. That is located at 1251 Apache Boulevard?

A. It is not now. It was at the time.

Q. What is the present location?

A. 4519 East Van Buren.

Q. Where is the location of that? Is that in the
city of Phoenix?

A. Phoenix, yes, outside the city limits.

Q. Back in late 1954, where was your stand lo-
cated? A. At Tempe.

Q. Tempe, in the city? A. Yes.

Q. Do you recognize the name of Ben Hoffman?

A. Yes.

Q. Do you recognize the name Acme Distribut-
ing Company? A. Yes, sir.

Q. Do you see Mr. Hoffman in this room?

A. Yes.

Q. Would you point him out to the jury, please?

A. It is the man back in the back with the brown
coat on (indicating).

(Testimony of Floyd Bishop.)

Q. Do you recall where you first met Mr. Hoffman?

A. He come to my stand to sell dates. [167]

Q. Approximately when?

A. You mean what month?

Q. Yes. A. I think it was in November.

Q. Of what year? A. 1954.

Q. Do you recall the brand name of those dates?

A. Gold Cup and Long's.

Q. I show you Government's Exhibit 6 in evidence, and Government's Exhibits 16 and 17 for identification, and I ask you if you recognize these cartons? A. Yes, I recognize all of them.

Q. Do you recognize this carton? A. Yes.

Q. Is that a type of date that you bought from Mr. Hoffman? A. Yes.

Q. That is Government's Exhibit 6 in evidence. I show you Government's Exhibit 16 for identification. Do you recognize that carton?

A. Yes.

Q. Is that of a type that you bought from Mr. Hoffman? A. Yes, it is.

Q. I show you Government's Exhibit 17 for identification, and ask you if you recognize that carton? [168] A. Yes.

Q. Is that of a type you bought from Mr. Hoffman? A. Yes.

Q. Do you recall the date purchases that you made from Ben Hoffman?

A. You mean the amount?

Q. Yes.

(Testimony of Floyd Bishop.)

A. Approximately \$400 worth.

Q. Do you recall what proportion of those dates were of one of these two brands?

A. No, I don't.

Q. Do you have any records that might help you remember?

A. I have the record of what I bought, but it don't say which brand.

Q. Would you testify that you bought both of those brands during that period? A. Yes.

Q. You say he first approached you in November. When was the last time he approached you to sell dates, do you recall?

A. No, I don't know what date it was.

Q. Could you estimate it?

A. It was around the last of November. It wasn't very long in time.

Q. Do the bills you brought with you show how much you [169] paid for the dates? A. Yes.

Q. Could you estimate from those bills what you paid a pound for them?

A. Oh, probably could. Around 10 to 12 cents a pound.

Q. Are these the bills? A. Yes.

Q. Would you give them to me?

A. Yes. (Handing to counsel.)

Mr. Eubank: I would like to have these bills marked Government's Exhibits 22, 22-A, B and C for identification.

The Clerk: Government's Exhibits 22, 22-A, B and C for identification.

(Testimony of Floyd Bishop.)

(Said receipts were marked as Government's Exhibits 22, 22-A, 22-B and 22-C for identification.)

Q. (By Mr. Eubank): I show you Government's Exhibits 22, 22-A, B and C for identification, and ask you if you recognize those documents?

A. Yes.

Q. And those are the ones that you brought with you this morning? A. Those are mine.

Q. How are those kept by you in your business?

A. You mean did I keep any more records except these? [170]

Q. No. This thing. When were these first written out?

A. I don't understand what you mean.

Q. What date?

A. Well, for November, they go in my books in November, is when I put them in my books.

Q. What is the nature of this instrument?

Mr. Whitney: You said what is in the exhibit you are talking about.

Mr. Eubank: Yes, sir.

Mr. Whitney: I object to it until the exhibit is introduced.

Mr. Eubank: We are trying to identify them.

Mr. Whitney: Identify it without saying what is on it.

Mr. Eubank: That is right, but he can say what they are.

The Court: Don't argue. Go ahead.

(Testimony of Floyd Bishop.)

The Witness: I see what you mean. It was dates, is what it is.

Q. (By Mr. Eubank): Now, how long is this type of record kept by you?

A. Well, I keep them all the time. I don't ever destroy it.

The Court: Is that your original record?

The Witness: Yes, sir.

The Court: The first notation you made is on one of those papers? [171]

The Witness: I beg your pardon?

The Court: The first notation you make is on one of those papers, is that right?

The Witness: I didn't write any of it. I put it in my book.

The Court: What do you keep those things for?

The Witness: For receipts at the end of the year, for my income tax.

Q. (By Mr. Eubank): Who did you get the receipt from? A. From Ben Hoffman.

The Court: It is your receipts for money paid?

The Witness: I paid for the dates, yes.

The Court: To the defendant?

The Witness: Yes.

Mr. Eubank: I ask that Exhibits 22, 22-A, B and C be admitted in evidence.

Mr. Whitney: You didn't make these up yourself?

The Witness: No, sir.

Mr. Whitney: Do you know what brand of dates each one of these referred to?

(Testimony of Floyd Bishop.)

The Witness: No, I don't. It was just dates.

Mr. Whitney: I object on the grounds they are not properly identified, and no foundation laid.

The Court: Objection overruled. They may be received. [172]

The Clerk: Government's Exhibits 22, 22-A, 22-B and 22-C in evidence.

(Said receipts were received in evidence and marked as Government's Exhibits 22, 22-A, 22-B and 22-C.)

Q. (By Mr. Eubank): I show you plaintiff's Exhibits 22, 22-A, B and C in evidence, and ask you if these documents represent the amounts that you paid Acme Distributing Company?

A. Yes.

Q. And did you see, or, this initial on the bottom of all four of these exhibits, did you see that initial put on there?

A. Yes, I did.

Q. Who put it on? A. Ben Hoffman.

Q. That is the gentleman seated over there?

A. Yes, sir.

Q. By looking at these documents, is it possible for you to tell us what you paid a pound for these dates?

A. Yes. Around 11c a pound.

Q. That is your recollection of the transaction?

A. Yes.

Q. Now, Mr. Bishop, at the time you bought those dates, do you recall what the market was in the Phoenix or Tempe area for dates? [173]

A. You mean that grade of dates?

(Testimony of Floyd Bishop.)

Q. That is right:

A. Around 10 to 12 cents a pound.

Q. Was there any representation made by Mr. Hoffman when he sold the dates to you?

A. I don't know what you mean.

Q. Well, did he use any sales pitch on selling the dates? A. No, not necessarily.

Q. He just had dates to sell?

A. He had dates to sell, and I needed them.

Q. And you were in the market? A. Yes.

Mr. Eubank: No further questions.

Cross-Examination

By Mr. Whitney:

Q. All these purchases made by you, Mr. Witness, were made in the ordinary course of business like you would do anything else?

A. That is right.

Mr. Whitney: That is all.

Mr. Eubank: That is all. May this witness be excused?

The Court: He may be.

(Witness excused.)

The Court: The Court stands at recess until two o'clock. Keep in mind the Court's admonition.

(The noon recess was had.) [174]

September 19, 1956—2:00 P.M.

Court resumed pursuant to recess.

Present: Same as before.

* * *

The Court: You may proceed.

Mr. Eubank: I will call Mr. Pelley.

ROBERT L. PELLEY

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Robert Pelley?

A. That is right.

Q. P-e-l-l-e-y? A. That is right.

Q. And you formerly had a fruit stand at 1017
Apache Boulevard? A. That is right.

Q. In Tempe, Arizona? A. Yes.

Q. Do you presently have a fruit stand there,
Mr. Pelley? A. I do. [175]

Q. Do you recognize the name of Ben B. Hoff-
man? A. Yes, sir.

Q. And the name of Acme Distributing Com-
pany? A. Yes, sir.

Q. Do you recognize Mr. Hoffman in this court
room? A. Yes, sir.

Q. Would you point him out to the jury, please?

A. Yes, I could.

Q. This gentleman here? A. Yes.

Q. Did you do any business with Mr. Hoffman?

A. I bought dates from him.

(Testimony of Robert L. Pelley.)

Q. Approximately when was that, Mr. Pelley?

A. Well, it was during November and December of 1954.

Q. And in regard to these dates, do you recall the names of the dates?

A. Well, it was mostly Gold Cup packed by Glass Company, and there was a few of Long's.

Q. Do you have any records for your own use?

A. Yes, sir.

Q. Demonstrating those purchases?

A. I do.

Q. Did you bring those records with you?

A. Yes, sir, I have them.

Q. Would you give them to me, please? [176]

A. Yes (handing to counsel).

Mr. Eubank: I ask that these exhibits be marked as Government's Exhibits for identification 23, 23-A, B, C and D.

The Clerk: Government's Exhibits 23, 23-A, 23-B, 23-C and 23-D for identification.

(Said receipts were marked as Government's Exhibits 23, 23-A, 23-B, 23-C and 23-D for identification.)

Q. (By Mr. Eubank): Mr. Pelley, I show you Government's Exhibits 23, 23-A, B, C, and ask you if you recognize those papers or documents?

A. Yes.

Q. Would you tell us how you recognize them?

A. How do you mean?

Q. Well, what do these documents represent?

(Testimony of Robert L. Pelley.)

A. They represent cash receipts for merchandise bought.

Q. And where do you usually keep this type of instrument?

A. Well, it is kept in our regular monthly and yearly record book.

Q. And the dates on these receipts, how do they relate to the dates of purchase?

A. Well, they would correspond at least within a 30-day period.

Q. Now, these particular receipts, can you testify from these who gave you the receipts? [177]

A. That is right.

Mr. Eubank: I ask that Government's Exhibits 23, 23-A through D be admitted in evidence.

Mr. Whitney: What count does that refer to?

Mr. Eubank: This is the Long and Glass counts. That would be Counts 1, 2 and 3 of the Indictment, I think.

Mr. Whitney: I object to them on the grounds there is no foundation, and not properly identified.

The Court: They may be received.

The Clerk: Government's Exhibits 23, 23-A, 23-B, 23-C and 23-D in evidence.

(Said receipts were received in evidence and marked as Government's Exhibits 23, 23-A, 23-B, 23-C and 23-D.)

Q. (By Mr. Eubank): Mr. Pelley, referring to the exhibits that the clerk has just enumerated, would you tell us from whom each of these receipts

(Testimony of Robert L. Pelley.)

was received? A. Each of them?

Q. Yes.

A. Each of them is from Ben Hoffman.

Q. How do you recognize that fact?

A. Well, I know that he gave them to me, and this is his signature here, and, of course, these are initialed here, meaning the same thing, I mean, written by the same person.

Q. Did he initial those before you? [178]

A. That is right, with the exception of this one, of course. Here is one here.

Q. That is 23-D?

A. Yes. And that was supposed to have been a man working with him.

Q. Now, in regard to those statements, Mr. Pelley, can you identify which of those purchases were Long's dates, and which of them were Gold Cup?

A. No, sir, I couldn't.

Q. Mr. Pelley, I show you Government's Exhibit 6 in evidence, and ask you if you recognize that pack cover?

A. The package, yes, sir. I recognize that.

Q. How do you recognize it?

A. By the brand name.

Q. And is this the type of cover that you bought from Mr. Hoffman?

A. It was, yes.

Q. I show you plaintiff's Exhibits 17 and 16 for identification, and ask you if you recognize the cover on Government's Exhibit 17?

A. I do.

Q. And how do you recognize that cover?

A. By the brand and the size of pack.

(Testimony of Robert L. Pelley.)

Q. And is this similar to dates that you purchased from Mr. Hoffman? [179] A. It is.

Q. I show you Government's 16 for identification, and ask you if you recognize that pack?

A. I do.

Q. And is that similar to packs that you bought?

A. It is.

Q. Mr. Pelley, can you by referring to Government's Exhibit 23 in evidence approximate the amount that you paid for these dates a pound?

A. Well, some of them were approximately 13c, and some of them were approximately 11.

Q. And your testimony would be that the dates that you purchased were in that range?

A. Yes.

Q. And they weren't any more than that, to your knowledge, a pound? A. That is right.

Mr. Eubank: No further questions.

Mr. Whitney: No questions.

The Court: That will be all.

Mr. Eubank: May this witness be excused?

The Court: He may be.

(Witness excused.)

LYNN BEDFORD

called as a witness in behalf of the Government, having been [180] first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Lynn Bedford?

A. That is correct.

Q. And you are a special agent of the Federal Bureau of Investigation? A. Yes, sir.

Q. And you are stationed in the Phoenix area?

A. Yes, sir.

Q. Do you recognize the name of Ben B. Hoffman?

A. Yes, Ben Hoffman is sitting right behind you.

Q. Do you recognize the name of Acme Distributing Company? A. Yes, sir.

Q. Now, you have said Mr. Hoffman is behind me. Would you point him out to the jury?

A. He is the gentleman with the brown coat.

Q. At this table? A. Yes, sir.

Q. Would you tell us in what capacity, or the capacity that you learned of Mr. Hoffman?

A. As a special agent of the Federal Bureau of Investigation, I first became acquainted with Ben Hoffman.

Q. And did you at any time interview him personally?

A. Yes. I talked to Ben Hoffman on two different occasions. [181]

Q. Do you recall the dates?

(Testimony of Lynn Bedford.)

A. January 21st, 1955, and again on January 23rd, 1955.

Q. And the event of the first conversation, what did you tell Mr. Hoffman, and what was his reply to your statement?

A. The first conversation I had with Ben Hoffman on January 21st, 1955, occurred right after his arrest. At that time he stated that he desired to make no statements to anyone regarding his business activities.

Q. And was anything else said at that occasion by Ben?

A. No, other than his refusal to make any statement.

Q. At the time of the second meeting, would you relate what was said at that time?

A. On January 23rd, 1955, I talked to him again, and he again advised me that he did not wish to speak to me on any matter concerning his business transactions.

Q. And that was all the statement he made to you?

A. That is correct.

Q. Now, in the course of your investigation, did you determine or look into the activity of Acme Distributing Company?

A. Yes, sir, I did.

Q. Did you go to 818 Apache Boulevard in Tempe?

A. Yes, sir, I did, on several occasions.

Q. Would you explain to the jury the type of business office that you found at that location? [182]

(Testimony of Lynn Bedford.)

A. 818 Apache Boulevard in Tempe is on the Tempe-Mesa Highway just east of the college.

818 Apache Boulevard is a small building on the north side of the highway, and consists of two small rooms. The first one is perhaps 10 feet by 10 feet square, and the second room is approximately the same size.

On one occasion I was inside the building, and there was one desk and two chairs. There was no other furniture in there.

However, there were various boxes piled up in there that had just been received by Mr. Pritchett, the owner, in the absence of Mr. Hoffman, who was in jail, and they were stored in there, and they were from a plastic molding company, in Los Angeles, California.

Q. The office that you testified to examining, that was the office of the Acme?

A. Acme Distributing Company. It had his sign on the front window, and he had a state license to do business also in that.

There were no blinds, no curtains, or any furniture or material in there except just these two chairs and a desk.

Q. Were there any books or records?

A. No books, no records, no papers, not a thing in the building.

Q. Did you attempt to find an office, Acme Distributing [183] Company, at Mesa, Arizona?

A. Yes, and I found he formerly had a place

(Testimony of Lynn Bedford.)

of business at Henry Leppla's, the Mesa Transfer & Storage Company.

Q. In further investigation of this problem, did you have the opportunity to investigate into dates?

A. Yes.

Mr. Whitney: Into what?

Q. (By Mr. Eubank): Into dates?

A. When I had received information of these dates being transported in interstate from California to Arizona, and I had received information that these dates had been flooding the market in Tempe, Mesa and Phoenix at a very low price, I immediately contacted the various fruit stands.

Mr. Whitney: I object to that as hearsay.

The Court: It would be.

The Witness: I contacted——

The Court: Just a minute. What these people told you is hearsay. You can't testify to that.

Mr. Eubank: Your Honor, he can testify to the dates he bought, can he not?

The Court: He personally bought?

Mr. Eubank: Yes.

The Court: All right, go ahead. [184]

Q. (By Mr. Eubank): Continue.

A. I contacted various fruit stands in Phoenix, Tempe, and Mesa, and made inquiry regarding the Long dates and the Gold Cup dates put out by the Glass Company in Los Angeles.

Mr. La Prade: Will you fix the time that these things took place?

(Testimony of Lynn Bedford.)

Q. (By Mr. Eubank): What was the date of the date investigation, Mr. Bedford?

A. He was arrested January 23rd, 1955, and it was the next few days after that, within a week's period of time.

Q. I show you plaintiff's Exhibit 6 in evidence and ask you if you recognize this box?

A. Yes, I recognize this box of Long dates.

Q. How do you recognize that particular box?

A. My initials are on the back of this box, showing that I had purchased this on January 24, 1955, from Wilford Claus, at 3422 East Thomas in Phoenix. He is a brother and partner of Mr. Claus that testified here yesterday.

Q. Can you testify as to the price of this particular box of dates?

A. I purchased three of these one-pound boxes for 49c. The other two pound boxes that go with it are in my briefcase.

Mr. La Prade: 49c per box?

The Witness: For the three of them. They were being sold [185] at that time six for one dollar.

Mr. Eubank: Would you mark these as exhibits, please?

The Clerk: Government's Exhibits 24 and 25 for identification.

(Said packages of dates were marked as Government's Exhibits 24 and 25, respectively, for identification.)

Mr. La Prade: Your Honor, for the record, may

(Testimony of Lynn Bedford.)

we show an objection to any testimony from the witness concerning the retail price of dates at the time or place, for the reason the defendant didn't set the retail price, and it wouldn't have any relevancy at all?

The Court: That might be true. I will let it go for the time being.

Q. (By Mr. Eubank): I show you Government's Exhibits 25 and 24 for identification, and ask you if you can identify these boxes?

A. These are the other two boxes, along with the third box that I had purchased for 49c.

Q. And these were from the——

A. From the Claus Fruit Stand on 32nd St. and E. Thomas.

Mr. Eubank: I ask that these be admitted in evidence, your Honor.

The Court: All right.

The Clerk: Government's Exhibits 24 and 25 in evidence.

(Said packages of dates were received in evidence and marked as Government's Exhibits 24 and 25 in evidence.) [186]

Q. (By Mr. Eubank): I show you Government's Exhibit 16 for identification, and ask you if you can recognize this?

A. This is a pound box of Gold Cup dates that I purchased on January 24, 1955. I purchased that from Mr. Pellet, or Pelley, that just testified before me.

(Testimony of Lynn Bedford.)

Q. You recognize this as the box?

A. That is correct. My initials appear on it.

Mr. Eubank: At this time I ask that this Government's Exhibit 16 for identification be admitted in evidence.

The Court: All right.

Mr. Whitney: It is immaterial and hearsay as to the defendant.

The Court: It may be received.

The Clerk: Government's Exhibit 16 in evidence.

(Said package of dates, Glass Company, was received in evidence and marked as Government's Exhibit 16.)

Q. (By Mr. Eubank): Now, in relation to Government's Exhibit 16 in evidence, Mr. Bedford, would you tell us the price that you paid for this particular item?

Mr. La Prade: May we object for the record? It is not binding on the defendant.

The Court: Objection overruled. [187]

The Witness: I purchased that I believe for 12c, is the price paid for it.

Q. (By Mr. Eubank): I show you Government's Exhibit 17 for identification, and ask you if you recognize this box?

A. This is a 3-pound box of Gold Cup dates which I had purchased from Bob Pelley at his place of business, 1017 Apache Boulevard, Tempe. This purchase was made on January 24, 1955, along with the 1-pound box.

(Testimony of Lynn Bedford.)

Q. How do you recognize that this is that box?

A. My initials appear on that, as well as the date, and Bob Pelley's name.

Mr. Eubank: I ask that Government's Exhibit 17 for identification be entered in evidence.

The Court: All right.

Mr. Whitney: Objection on the grounds it is not binding on the defendant.

The Court: It may be received.

The Clerk: Government's Exhibit 17 in evidence.

(Said package of dates, Glass Company, was received in evidence and marked as Government's Exhibit 17.)

Q. (By Mr. Eubank): Do you recall the price of Government's Exhibit 17 in evidence, Mr. Bedford?

A. I recall that Bob Pelley sold those dates to me at the [188] same price that he had paid for them, which I believe was around 12c per pound. That would make a total of about 35, 36c for that box.

Mr. Eubank: No further questions.

Mr. Whitney: That is all.

(Witness excused.)

Mr. Eubank: As the next witness, I would like to call Mr. Rouland Goodman.

ROULAND GOODMAN

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Rouland Goodman?

A. Yes, sir.

Q. And you are the operator and owner of Goodman's Market? A. Yes, sir.

Q. That is a wholesale grocers' outlet, is it not?

A. Yes.

Q. Located at 350 South Park in Tucson, Arizona? A. It was. It has been moved.

Q. Where is the present location?

A. 1055 South Campbell.

Q. In the course of your business, Mr. Goodman, do you [189] recognize the name of Mr. Ben B. Hoffman? A. Yes, sir.

Q. Do you recognize the name of Ben B. Hoffman Wholesale Grocers? A. Yes, sir.

Q. Do you see Mr. Hoffman in this court room today? A. Yes, sir.

Q. Would you point him out to the jury, please?

A. Right there, with the brown suit on.

Q. In regard to Mr. Hoffman, and also in regard to the Brice, or Brice Pickle Company, do you recall a transaction that occurred where you purchased certain pickles? A. Yes, sir.

Q. From Mr. Hoffman?

(Testimony of Rouland Goodman.)

Mr. Eubank: I would like to have this marked as Government's Exhibit 26, and following.

The Clerk: Government's Exhibits 26, 26-A, 26-B, 26-C and 26-D for identification.

(Said Bill of Lading, Report, and Invoice, were marked as Government's Exhibits 26, and 26-A through D, inclusive, for identification.)

Q. (By Mr. Eubank): Mr. Goodman, on your purchases, would you explain to the jury the technique used by your company for the record keeping purposes on purchases made by you? [190]

A. Any purchases made by us. that we purchase, our receiving clerk has a form that he fills out as to what he receives, which should match up with our freight bill, which should match up with our invoice.

Q. And then those records are kept where in your office, the freight bill and receipts?

A. They are in a file, a separate file for each company.

Q. How long do you maintain those files, usually?

A. Well, possibly indefinitely.

Q. I show you Government's Exhibits 26. 26-A through 26-D, and ask you if you recognize these instruments?

A. Yes, I do.

Q. How do you recognize these instruments?

A. This is our form of which our clerk receives the merchandise on, which his signature is on there. In both cases, the boy that received the merchandise

(Testimony of Rouland Goodman.)

has signed our receiving record, and also has signed the freight bill.

Q. On this last document here, is there anything there that you can identify as being part of your records?

A. Well, this is our invoice for the merchandise, of which when this is paid I stamp it "Paid" and put the check number.

Q. Is this your handwriting?

A. That is my handwriting there.

Mr. Eubank: I ask that these documents, 26, 26-A through [191] 26-D, be admitted in evidence.

Mr. Whitney: May I ask one question on voir dire?

The Court: All right.

Mr. Whitney: These were purchased in the regular course of business?

The Witness: Yes.

Mr. Whitney: No objection.

The Court: They may be received.

The Clerk: Government's Exhibits 26, 26-A to 26-D, inclusive, in evidence.

(Said documents were received in evidence and marked as Government's Exhibits 26, 26-A, 26-B, 26-C and 26-D.)

Q. (By Mr. Eubank): Now, referring to the invoice, could you tell the purchase you made on that date?

A. You mean what I have purchased here?

Q. That is right.

(Testimony of Rouland Goodman.)

A. 245 cases of dill pickles, 32 ounce. 295 cases of dill pickles in the 16 ounce. 150 cases of mixed sweet and sour pickles.

Q. Now, from the record of your receiving clerk, can you tell the type and character of those pickles?

A. Yes, on our receiving receipt here, we show each item as they are listed.

Q. And then the brand name? [192]

A. Brice kosher dill pickles, Brice sweet pickles, and so forth.

Q. And that is the same?

A. The other is the same, Brice dill pickles.

Mr. Eubank: Mark this as Government's Exhibit 27 for identification, please.

The Clerk: Government's Exhibit 27 for identification.

(Said check was marked as Government's Exhibit 27 for identification.)

Q. (By Mr. Eubank): I show you now Government's Exhibit 27 for identification, and ask you if you recognize that document?

A. Yes, this is one of our checks which I signed.

Q. And this is your signature?

A. That is my signature.

Q. Can you tell from looking at that what that check is in the payment of?

A. Payment of invoice of the 6th and 12th.

Q. And do you know the payment that that relates to?

A. Well, it relates to an invoice on that particu-

(Testimony of Rouland Goodman.)

lar date of six hundred and some odd cases of pickles.

Q. If I show you the invoice, could you tell me the payment that this relates to? A. Yes.

Q. I show you Government's Exhibit 26-D in evidence, and [193] ask you if this check was in payment of that invoice?

A. Yes, it is in payment of these pickles, \$1,083.75.

Q. And this check number you have written there?

A. The check number is 2488, the number 2488 on the check.

Mr. Eubank: Thank you. I ask that Government's Exhibit 27 for identification be admitted in evidence.

Mr. Whitney: The objection is that this is immaterial, has nothing to do with the charge in the Indictment.

The Court: All right, it may be received.

The Clerk: Government's Exhibit 27 in evidence.

(Said check was received in evidence and marked as Government's Exhibit 27.)

Q. (By Mr. Eubank): Mr. Goodman, are you familiar with, or would you recognize Mr. Hoffman's signature? A. No, I wouldn't.

Q. Would you recognize the letterheads of his business? A. Yes.

Q. On Government's Exhibit 26-D, was that the usual, or is that the letterhead that you would say

(Testimony of Rouland Goodman.)

you could recognize? A. Yes.

Q. That is the letterhead of his business?

A. Yes.

Q. When Mr. Hoffman contacted you in regards to pickles, [194] would you please relate to the jury the tenor of the conversation between you two? What was the offer, and what was the acceptance?

A. It has been so long ago it would be hard to say exactly.

Q. Well, as best you recollect.

A. He offered us the pickles at a price that sounded very attractive to us, and we went down to his place and examined, I will say, six to 10 cases of pickles, to make sure that there was nothing wrong with them, which they all looked fine. And we accepted his offer.

Q. Now, on the examination of the pickles, would you explain to the jury what you were looking for when you examined them?

A. Well, we was looking for a possibility of maybe some soft pickles, or some bad pickles, because the price was kind of below normal, and we didn't want anything but what was first grade merchandise.

Q. And you determined from your examination that this merchandise was first class?

A. It was first-class merchandise.

Q. Now, all the pickles you examined, do you recall the titles or the brand name on it?

A. They were all Brice.

(Testimony of Rouland Goodman.)

Q. Is that the only pickle shipment you bought from [195] Mr. Hoffman, that you recall?

A. To the best of my knowledge, that was the only pickles we had ever bought from him, Mr. Brice, Brice pickles.

Q. Did you ever pay a visit to Ben Hoffman's Wholesale Grocers, his office?

A. Yes, on two or three occasions.

Q. When you visited this office, could you tell the jury the type of operation, the impression of the operation on you?

Mr. Whitney: I object, immaterial.

The Court: We don't care about any impression. What he saw. This is cumulative.

Q. (By Mr. Eubank): Would you testify as to what you saw in Ben Hoffman's office?

The Court: He is going to testify to the same thing that three or four other people testified to. It isn't necessary.

Mr. Eubank: All right.

Q. (By Mr. Eubank): Mr. Goodman, are you the successor of the Dick Company?

A. Well, the Dick Company was in the same building which I am in at the present time. I am not their successor. They sold out, quit business, and we took over the building.

Q. And you operated from that building?

A. We operated from the building. We didn't buy any merchandise from them. [196]

Mr. Eubank: No further questions.

(Testimony of Rouland Goodman.)

Cross-Examination

By Mr. La Prade:

Q. Mr. Hoffman's warehouse in Tucson, you say you went into it and inspected the pickles?

A. Yes, sir.

Q. Was it a good-sized warehouse?

A. What I seen of it wasn't half as large as this building. You wouldn't consider it a warehouse, no. No.

Q. It was full of merchandise, is that not correct?

A. No, it was not full of merchandise at the time I was in it.

Q. Did you know whether or not he had any other place, store or place of display for merchandise in Tucson?

A. No. I kind of assumed that he had. I didn't know.

Mr. La Prade: That is all.

Redirect Examination

By Mr. Eubank:

Q. How much other merchandise than the pickles was in that warehouse?

A. At the time that I looked at those pickles, there was just a few cases of pickles, I say 15 to 30 cases that I seen. I believe I stepped around, and there was possibly, well, there really wasn't hardly any merchandise. It may have been at the same

(Testimony of Rouland Goodman.)

time that he had some brooms back there, but I am [197] not sure, but at any time I was in there he didn't have over, let's see, \$150 worth of value in the building. That is approximately it.

Mr. Eubank: No further questions.

The Court: Is that all now?

Mr. Whitney: That is all.

(Witness excused.)

Mr. Eubank: Mr. John E. Doyle.

JOHN E. DOYLE

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is John E. Doyle?

A. That is right.

Q. And you are presently living at 3525 East
Bellevue? A. 3525 East Bellevue.

Q. That is in Tucson, Arizona?

A. Tucson, yes.

Q. And, Mr. Doyle, do you recognize the name
of Ben B. Hoffman? A. Yes.

Q. Do you recognize the name of Benjamin B.
Hoffman Wholesale Grocers?

A. A broker, yes. [198]

Q. And do you see Mr. Hoffman in this court
room?

(Testimony of John E. Doyle.)

A. Yes, there he is back there, the bald-headed fellow right back of you.

Q. What color coat does he have on?

A. Brown.

Q. How do you know Mr. Hoffman?

A. I worked for him.

Q. How long did you work for him?

A. For a week.

Q. Where did you work for him?

A. South 4th Avenue in Tucson.

Q. Do you recall the approximate street number?

A. That is between sixteen two and sixteen six, along in there.

Q. Where did you live at that time?

A. Right across the street.

Q. How long did you live across the street?

A. I lived there about three years.

Q. During the time you lived there, how long was the Hoffman enterprise operated across from you?

A. I will have to guess about this.

Mr. La Prade: We object to his guessing, your Honor.

The Court: All right.

Q. (By Mr. Eubank): Can you testify of your own knowledge, approximately? [199]

A. Close to a year.

Q. In that year you are talking about, can you give us a date, I mean the dates—as you recall it, the date that the business operated across from you?

A. Around in June somewhere.

(Testimony of John E. Doyle.)

Q. What year? A. 1954.

Q. Are you sure it is 1954? You say you worked for Ben about a week? A. Yes.

Q. What were your working hours?

A. From eight in the morning to four in the afternoon.

Q. And what was your pay?

Mr. Whitney: I object as immaterial.

The Court: He may answer.

The Witness: I don't know what the pay was. He give me \$5 a week.

Q. (By Mr. Eubank): When you worked for Ben, how would you describe your job? What were you supposed to do?

A. I was janitor, and answering the telephones.

Q. What was your time, what were the hours you worked?

A. From eight in the morning until four in the afternoon.

Q. During that time, in the week you worked for Mr. Hoffman, was he at the office? [200]

A. Yes, he was at the office in the morning.

Q. How long was he usually there at each of those days?

A. Well, he went home for lunch. Then he came right back.

Q. Was he there most of the day?

A. Yes, most all the day.

Q. Being in the office, you must have observed his business operation? A. Yes, I did.

Q. Did he have any files in the office?

(Testimony of John E. Doyle.)

A. No.

Q. Were there books or records in the office?

A. No.

Q. Did he have any employees?

A. Only me and him, that is all, and his wife come in once in a while.

Q. What was the character of Mr. Hoffman's business? What did he do to get business?

A. Well, he would come in in the morning with a list his wife give him. She come down and handed him the list, and he would call up these, the long distance operator, and he would give them a list of people that he wanted to call, give him four, five, six or seven of them. And then she would put in the calls, and they called him, and he would order the stuff, whatever he had on the list.

Q. Now, on these particular calls, were those prepaid [201] calls, or were they collect calls?

A. The other party paid for them.

Q. In other words, it was a collect call?

A. No, it was not collect.

Mr. Whitney: Your Honor, I object. May we ask a question on voir dire?

The Court: You can cross-examine.

Q. (By Mr. Eubank): Now, could you approximate the number of these calls you overheard while you were in the office?

A. Yes, I got a list here. Is it all right to look?

Q. Not right at the moment. I am asking for an approximate number, if you can give one.

A. I don't know how many he had. I got it right

(Testimony of John E. Doyle.)

down here, sir. That is some of his paper there, too.

Q. On these collect calls they made, were they quite numerous in a day's time? A. Yes.

Q. Now, you say that you overheard collect calls. Do you recall the character of the conversation?

A. Well, I will just tell you how he used to say it, Mike, and I won't give you the names, and them, because I can't remember the names.

He called and said, "Hello, is this Mr. Jones?" "Yes." "How are you, this is Ben Hoffman, the broker, in [202] Tucson, Arizona, South 4th Avenue.

"How is business?" That is the way he started out.

Then he would ask them what the article, the price it was, whatever he wanted, and asked him the size of the cans and all that, then he wanted to know if he could get a truckload, and he would want the truckload. And he said, "Don't forget to put some samples in for the boys."

Q. Now, were there any salesmen hired by Mr. Hoffman while you were there? A. No.

Q. Did you see any salesmen come into the office? A. No. Nobody come in.

Q. Now, on these phone calls that you say you wrote down a memorandum on.

Mr. Whitney: Did he say he wrote a memorandum on it?

Mr. Eubank: Yes.

Q. (By Mr. Eubank): Do you have that memorandum with you? A. Yes.

Q. Can you of your own, of your own independ-

(Testimony of John E. Doyle.)

ent recollection recall those calls, or do you have to refer to that?

A. I got to refer to this here. That is what I wrote right in his office there, and I kept it. That is the same paper I kept.

Q. That is, referring to this, you can testify as to [203] what his calls were?

A. Sure. Sure. I ain't going to lie against the man. I'm telling the truth.

Mr. Eubank: I ask that this be marked as plaintiff's Exhibit 28 for identification.

The Clerk: Government's Exhibit 28 for identification.

(Said memorandum was marked as Government's Exhibit 28 for identification.)

Q. (By Mr. Eubank): I show you Government's Exhibit 28 for identification, and ask you if this is the list you were describing? A. Yes.

Q. And when was this list written?

A. 1954.

Q. And when the list was written were you then in the employment of Ben Hoffman? A. Yes.

Q. And do you relate this list with any particular day? Any day of your employment?

A. Every day, yes, added to it.

Q. Does this list include all the calls, or just a few calls you overheard?

A. This is the main calls that I remembered.

Mr. Whitney: Your Honor, I ask that this be admitted in evidence not for the purpose of refresh-

(Testimony of John E. Doyle.)

ing his recollection, [204] but as the evidence he would give.

The Court: He can use that to refresh his recollection.

Mr. Whitney: For what purpose?

Mr. Eubank: For refreshing his memory.

Mr. Whitney: If he is refreshing memory, then you don't put it in. It is either recorded recollection, or nothing else.

Q. (By Mr. Eubank): Using that list, can you then testify of your own recollection? A. Yes.

Q. Can you tell us the nature of the telephone calls that were made that you listed there, by Ben Hoffman? A. He ordered pickles.

Q. All right.

A. A whole truckload of pickles.

Mr. Whitney: If the Court please, I object on the grounds that if this recorded at the time, that is the best evidence. If it is not recorded, that is something else again. But if that was made at the time, that is one thing. If it is made at the time, then it probably could be entered.

The Court: He said it was made at the time.

The Witness: Made at the time, and I heard him make it, too.

The Court: All right, go ahead. Tell us what was said. [205]

Q. (By Mr. Eubank): All right, pickles.

A. Pickles.

Q. What were some of the other calls?

A. He ordered peaches, 2½ canned peaches. He

(Testimony of John E. Doyle.)

asked me if I liked peaches. I said yes. He said, "You will get some when they come in."

Q. What were some of the other orders?

A. He ordered brooms, two places, Denver and Texas. Peas. Rice.

Q. Do you recall where the peas were from?

A. I think over in Virginia, or Georgia some place over in there, black-eyed peas, they call them.

Q. What else do you have on there?

A. He had percolators, that is, a coffee urn up in Los Angeles. He had suitcases. I don't know where they come from. Mustard greens in the can. Pears. Coffee, Kansas City, Missouri. That is Conway Coffee Company. Juices of all kinds. Sardines and salmon.

Q. All right, now, Mr. Doyle——

A. After I made this list, I checked with the Better Business Bureau.

Mr. Eubank: That is all right.

Mr. La Prade: We object to any such statement.

The Court: No. You weren't asked a [206] question.

Mr. Eubank: We don't want any of that.

Q. (By Mr. Eubank): When you were hired, did Mr. Doyle explain the business to you, rather, did Mr. Hoffman explain the business to you, did he tell you what type of business he was in?

A. He told me he was a broker. You mean Mr. Hoffman?

Q. Yes, Mr. Hoffman, pardon me.

A. He was a broker.

(Testimony of John E. Doyle.)

Q. Did he describe what kind of broker he was?

A. Yes, he handed me a card, too.

Q. You were terminated at the end, or after a week, is that correct?

A. Yes, he canned me.

Q. For what reason did he can you?

A. Because I reported him to the Ruben Golds. He ordered furniture. He didn't have a penny to pay for it. And I told him they better watch out, because there was something crooked there somewhere.

Q. And he fired you for that reason?

A. Yes.

The Court: We will have our afternoon recess at this time.

(The afternoon recess was had.)

The Court: You may continue.

Q. (By Mr. Eubank): Mr. Doyle, while you were working at Mr. Hoffman's [207] establishment, were any shipments received at the establishment?

A. No, they were sent down to the Tuscon warehouse.

Q. Was there any storage facility in conjunction with this office?

A. Well, samples were put in there.

Q. And where was the storage room?

A. Well, there was a little partition that was up there that they put in back of the partition, and his samples back there.

(Testimony of John E. Doyle.)

Q. Now, in regard to the list that you compiled, why did you compile that list?

A. Well, I didn't think he was doing right.

Mr. Eubank: No further questions.

The Court: That last could be stricken. This case shouldn't be decided on what this witness thinks. Disregard that. It is for you to say whether he is guilty or not, not a witness that is called here to testify.

Cross-Examination

By Mr. La Prade:

Q. Mr. Doyle, where are you employed at the present time?

A. I am retired off the railroad.

Q. How long have you been retired?

A. 1949.

Q. You just had incidental jobs since [208] 1949?

A. The only job I had was with Hoffman.

Q. Did you ask him for that job?

A. I believe I did. He was looking for a man, and I was standing there, and I——

Q. How long did you actually work for him?

A. One week.

Q. Exactly how many days, do you recall?

A. Seven.

Q. Seven full days?

A. Six days. Six days, I take that back. Six days.

(Testimony of John E. Doyle.)

Q. Mr. Doyle, have you had any other janitor jobs? A. No.

Q. Are you here under subpoena to testify today? A. Yes.

Q. When did you arrive in Phoenix?

A. 1948.

Q. I mean this week, sir, did you just come up today?

A. I just come up today, yes. I used to live here some time ago.

Q. Prior to today, Mr. Doyle, have you had an opportunity, or did you talk to any representative of the Government concerning this case, any of the F.B.I. men, or postal inspectors?

A. Oh, I come down to the office, the postal inspector he wanted to know if I would come up and testify, and I said if you want me. [209]

Q. This gentleman right here in the blue coat?

A. Yes.

Q. When was that, sir?

A. I don't know what day it was. Thursday or Friday, something like that.

Q. That was the first contact you had had at all by anybody representing the United States Government concerning this case? A. Yes.

Q. It is your testimony that this list that you say you took down in 1954, you just happened to still have in your possession?

A. Yes, I had it, I kept it.

Q. You kept it all this time? A. Yes.

Q. For what purpose did you keep it, sir?

(Testimony of John E. Doyle.)

A. Well, when I went to the County Court, I kept it from there. I said, well, if the case will ever come up like that, I will have it. I am a great man to keep papers, railroad papers, and such stuff.

Q. Did you write all these down at the same time?

A. When he was ordering them, I wrote them down.

Q. Were these all on the same day?

A. No, not all of them on the same day, no.

Q. Different items were put on this Government's Exhibit [210] 28 on different days?

A. Yes.

Q. And did you use the same writing instrument on each occasion, that is, referring to the ink items?

A. I don't get you.

Q. Did you use the same pen, sir, on each of those items?

A. That is on one fountain pen, and this here was in pencil (indicating).

Q. When was this exactly? Will you pin that down for us?

A. In 1954.

Q. In what month of 1954?

A. June.

Q. Do you recall what week in June? Do you remember?

A. No. I can't recall what week, no.

Q. And what was it that caused you to write this down? Tell us that.

A. Because the way he acted. He didn't act right, and he said he didn't like——

(Testimony of John E. Doyle.)

Q. Just answer the question, sir.

The Court: What are you doing? I cut this all out. If you want it in, it is your fault, not the Court's

The Witness: He said he didn't like a policeman, and I was a policeman, and I was a deputy sheriff, too. He said he didn't like a policeman, and he didn't like a deputy sheriff. [211]

Q. (By Mr. La Prade): Mr. Doyle, do you have any record of the exact day that these phone calls were made you have testified about?

A. No. When I first went to work for him that morning, he started in on that telephone, and he never let up until four o'clock.

Q. When was it you made these notations, right after he made the phone calls, or while he was making them?

A. While he was making the phone calls, I would go back and write it down.

Q. Where? Right in back of the office?

A. Yes, right in back of the office.

Q. Did you listen in on his conversations?

A. Yes.

Q. Could you tell who he was talking to?

A. Well, I didn't put them down, but them were the people he called, that represents that product there.

Q. How does it happen you wrote down these different items of pickles, peaches, rice, percolators, suitcases, and so forth, without writing down where he was talking to? Was there any reason why you

(Testimony of John E. Doyle.)

put down the items, rather than where he was talking to?

A. Some of them I remember where he called. I remember where it was, like that percolator was Los Angeles Coffee Urn, was the name of the company. [212]

Q. Mr. Doyle, do you make it a habit to write down portions of your employers' conversations when you are listening to conversations?

A. Sometimes I do it. Conductors, and so forth, when I am on the road, keep a book. If you are going to be a good railroad man you got to do it.

Q. Couldn't this possibly be a grocery list of your own, Mr. Doyle?

A. Not mine. Maybe the wife's, but not mine. I ain't got no grocery list.

Q. Are you positive about all of your testimony, Mr. Doyle? A. What?

Q. Are you positive about all of the testimony you have given? A. On them there?

Q. There is no question about when it was?

A. No question about it at all.

Mr. La Prade: That is all.

The Witness: I ain't lying. You think I'm a liar?

Mr. Eubank: No further questions.

The Court: That will be all.

(Witness exused.)

Mr. La Prade: We offer this Government's Exhibit in evidence here for whatever it may be worth, Government's [213] Exhibit 28.

The Court: All right, it may be received.

The Clerk: That will be defendant's Exhibit B in evidence.

(Said Memorandum was received in evidence and marked as Defendant's Exhibit B.)

(The above exhibit was also marked as Government's Exhibit 28 for identification.)

Mr. Eubank: I will call R. O. Kelley.

R. O. KELLEY

called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is R. O. Kelley?

A. Yes, sir.

Q. You are the owner of R. O. Kelley Cannery?

A. Yes.

Q. At Midville, Georgia? A. Yes.

Q. Mr. Kelley, are you familiar with the name of Ben B. Hoffman?

A. Ben B. Hoffman Grocery Company, yes.

Q. And you have never personally met Mr. Hoffman, have you? A. No.

Q. Would you tell us how you became familiar with Ben B. [214] Hoffman Groceries?

A. Mr. Holmes of Holmes Canning Company had an inquiry from Mr. Hoffman about a certain

(Testimony of R. O. Kelley.)

size can of vegetable that we canned, and he didn't have them.

Q. What product?

A. Field peas with snaps. So he gave me the name and address.

Q. And you contacted him?

A. I contacted Hoffman Grocery Company.

Mr. Eubank: Mark this as Government's Exhibit 29 for identification.

(Said copy of letter was marked as Government's Exhibit 29 for identification.)

Q. (By Mr. Eubank): How did you contact Mr. Hoffman? A. I wrote him.

Q. And the original of that letter, what did you do with it?

A. The original was mailed to Mr. Hoffman.

Q. Was a copy retained? A. Yes.

Q. In your files? A. Yes.

Q. I show you Government's Exhibit 29 for identification and ask you if you recognize that document? [215] A. Yes.

Q. How do you recognize the document, Mr. Kelley? A. Well, by what I just stated.

The Court: You wrote the letter, didn't you?

The Witness: Yes. I dictated the letter myself.

The Court: All right.

Q. (By Mr. Eubank): And this is the letter you were talking about? A. Yes.

Mr. Eubank: I ask that Government's Exhibit 29 be introduced in evidence.

(Testimony of R. O. Kelley.)

Mr. Whitney: If the Court please, we object to this as hearsay as to the defendant, not the best evidence, and on the particular grounds that this is a letter to the Hoffman Grocery Company, where there has no foundation been laid for it in connection with counts 7 and 8 of the Indictment.

The Court: All right, it may be received.

The Clerk: Government's Exhibit 29 in evidence.

(Said copy of letter was received in evidence and marked as Government's Exhibit 29.)

Q. (By Mr. Eubank): Now, in regard to the original of this letter, Mr. Kelley, will you testify what happened to it? You say you mailed it. Will you describe that process, if you know.

A. That was mailed to Hoffman Grocery Company in Tucson. [216]

Q. And did you mail it yourself?

A. Yes, by government mail. No, mailed through the office there. My bookkeeper usually looked after the mail, or most of the letters are mailed, outgoing letters are mailed at night as we leave the office, and perhaps I could have mailed it, or maybe he did. I couldn't be positive about that.

Q. You have a routine in your office for the mailing of business letters, is that correct?

A. Yes.

Q. And that routine is as you have just said?

A. Yes.

Q. Now, in regard to Government's Exhibit 29,

(Testimony of R. O. Kelley.)

would you please read to the jury the contents of the letter to Mr. Hoffman?

A. (Reading): "Hoffman Grocery Company, Tucson, Arizona. Gentlemen——"

Mr. Whitney: If the Court please, the thing speaks for itself.

The Court: The jury doesn't know it. It doesn't speak loud enough. Go ahead.

The Witness (Continued): "Our good friend Mr. Holmes of Holmes Canning Company at Sandersville, Georgia, has given us your name as one that has made inquiries to him for field [217] peas with snaps. He advises us that he is not in position to furnish these due to a short pack. We are in position to give all the 2's that you will want, and will be glad to quote you in car lots f.o.b. Midville, or Millen, Georgia. Possible Millen as we have all our No. 2's stored in that warehouse. If interested we will be glad to furnish you samples.

"We are the oldest packer of field peas in the United States and all our pack is Government Graded, and we can furnish you certificates, with every can we ship or every lot we ship. Feel sure that you will like the product, once you have used it.

"We are hoping to hear from you, we are, Yours very truly, R. O. Kelley Cannery, by R. O. Kelley."

Q. Now, did you receive a reply to that letter?

A. Yes.

Q. And approximately how long after that letter did you receive the reply, do you recall?

A. Oh, it has been such a long time. I imagine

(Testimony of R. O. Kelley.)

about 10, 15 days. Perhaps not that long. I am not sure.

Mr. Eubank: Will you mark this, please?

The Clerk: Government's Exhibit 30 for identification.

(Said letter was marked as Government's Exhibit 30 for identification.)

Q. (By Mr. Eubank): I now show you Government's Exhibit 30 for identification, [218] and ask you if you recognize this document?

A. Yes.

Q. And how do you recognize this document?

A. By this signature of mine on there, and also the address, addressed to me.

Q. Now, is this the letter that was the reply to the letter that you sent? A. Yes.

Mr. Eubank: I would like to offer this letter in evidence.

Mr. Whitney: Objected to on the grounds it is no sufficient proof, hearsay as to the defendant, not the best evidence.

The Court: All right, it may be received.

The Clerk: Government's Exhibit 30 in evidence.

(Said letter was received in evidence and marked as Government's Exhibit 30.)

Q. (My Mr. Eubank): Mr. Kelley, I show you Government's Exhibit 30 in evidence, and ask you to read this letter that you received.

(Testimony of R. O. Kelley.)

A. (Reading): "August 24th, 1953. R. O. Kelley Cannery, Post Office Box 175, Midville, Georgia. Dear Mr. Kelley: Received your letter of August 20th advising me that you are in a position to supply me with No. 2 peas. Would appreciate if you would furnish samples immediately, and then I will get [219] in touch with you to see if we can work out an order for a truckload or a carload.

"Thanking you in advance. Yours very truly, Ben B. Hoffman."

Q. Now, in reply to this letter, did you ship peas? A. Yes.

Q. Now, was there any other communication before you shipped the peas, with Mr. Hoffman?

A. Yes, sir, he called me collect before.

Q. And is there a method by which you can tell the date of that telephone call?

A. On the paid telephone bill, is the only records we have of it.

Mr. Eubank: I ask that this be marked as Government's Exhibit 31 for identification.

The Clerk: Government's Exhibit 31 for identification.

(Said telephone bills were marked as Government's Exhibit 31 for identification.)

Q. (By Mr. Eubank): I show you Government's Exhibit 31 for identification, and ask you if you recognize these documents? A. Yes.

Q. And what are the documents?

(Testimony of R. O. Kelley.)

A. Those are the paid telephone bills of mine, for October 1st. [220]

Q. And is that the document whereby you can tell the date of the Collect telephone call?

A. Yes.

Mr. Eubank: I ask that Government's Exhibit 31 be admitted in evidence.

Mr. La Prade: We object to the introduction of this Exhibit 31 for identification, upon the ground that there has not been a sufficient identification of the person having placed the call having been this defendant.

The Court: All right, it may be received.

The Clerk: Government's Exhibit 31 in evidence.

(Said telephone bills were received in evidence and marked as Government's Exhibit 31.)

Q. (By Mr. Eubank): Can you tell by looking at this exhibit, Government's Exhibit 31 in evidence, the date of the collect phone call to you, Mr. Kelley?

A. This is on September 1st, 1953.

Q. And what is the pay station shown there? Where did the call come from?

A. Hoffman Grocery Company.

Q. And located where?

A. Tucson, Arizona.

Q. And this bill that you have, what telephone is that billed to? [221]

A. That is billed to me through Pineland Telephone Co-op, Swainsboro, Georgia.

Q. Was that to the phone at your office?

(Testimony of R. O. Kelley.)

A. Yes.

Q. And that is Midville, Georgia?

A. Yes.

Q. And you received this call in Midville, Georgia? A. Yes.

Q. Now, in relation to that Collect telephone call from Mr. Hoffman, would you relate the conversation you had with Mr. Hoffman?

A. As I recall, Mr. Hoffman wanted me to go ahead and ship him a truckload.

Q. And what happened?

A. And at that time our trucks were busy, and I asked to ship a small carload, that it would be very little difference in the number of cases, and he gave me permission to go ahead and ship this minimum carload.

Q. In that conversation, did you discuss at all his credit situation? A. No, I didn't.

Q. Did you discuss any other terms than the terms that you had already discussed in the mail?

A. To my knowledge I didn't, other than just the standard terms, and I don't think they were mentioned. [222]

Q. Is there any other statement you recall that Mr. Hoffman made at that particular occasion?

A. No, I do not recall.

Q. Now, as to the date of the shipment, would you please relate to the jury what happened when you shipped the peas, where you had them put on the freight cars?

A. Well, that was loaded on the Central Georgia

(Testimony of R. O. Kelley.)

tracks at Millen, and I think about four days later shipped into Tucson on our regular formal bill of lading.

Q. And was that a straight bill?

A. Straight bill of lading.

Q. Will you explain to the jury what a straight bill of lading is?

A. That is one that you receive on an open account bill of lading.

Q. These peas, then, were shipped on open account?

A. They were shipped on open account.

Q. Did anyone change that billing en route, that you know of?

A. Yes, we had it changed.

Mr. Whitney: I object to that as hearsay.

The Court: I don't know what it is. Go ahead.

The Witness (Continued): At the time Mr. Hoffman gave me the order, through the bank I put in for a report, a financial report. [223] And that was late coming in. That is the reason why the shipment was held up about four days. And I didn't get it, so I shipped them anyways, and after I got the report, it was in such condition that I didn't feel that he warranted any credit, and I wired and had the bill of lading changed over to a sight draft, bill of lading attached.

Q. (By Mr. Eubank): Now, as a result of your changing the bill of lading, what happened to the peas shipment?

A. The railroad in Tucson was notified to notify Mr. Hoffman when he came in, and give him 12

(Testimony of R. O. Kelley.)

hour, and if he didn't take them up at that time, they were to be reshipped to Lafayette, Louisiana, and unloaded there.

Q. Now, in regard to this change of shipping plan and order, did you then call Mr. Hoffman at any time?

A. Yes, I called him and told him what I was having to do, and why.

Q. And what was his statement to you?

A. He wanted to know where I got the information from. I told him the information I had he didn't warrant any credit, and I would have to put a sight draft, bill of lading attached, on the car.

Q. And what did Mr. Hoffman say then?

A. He just hung the phone up.

Q. And is that the last you ever heard of [224] him?

A. That is the last I have ever contacted Mr. Hoffman.

Q. Now, in regard to the return shipment, which of these records that you brought, Mr. Kelley, is the railroad statement showing the return of the shipment? Can you tell me?

A. This is the freight bill, returned freight bill (indicating).

Q. This is the returned freight bill?

Mr. Eubank: Would you mark this as plaintiff's Exhibit 32 for identification?

The Clerk: Government's Exhibit 32 for identification.

(Testimony of R. O. Kelley.)

(Said freight bill was marked as Government's Exhibit 32 for identification.)

Q. (By Mr. Eubank): I show you now Government's Exhibit 32 for identification, and ask you if you recognize that freight bill? A. Yes.

Q. How do you recognize it, Mr. Kelley?

A. Because it was mailed to me and I had to pay out this amount of money.

Q. Now, do you keep this type of thing in the business records of your company? A. Yes.

Q. And was this removed from those business records when you came, when you were subpoenaed here?

A. I removed it and gave it to the United States Marshal, [225] I believe, then.

Mr. Eubank: I move that Government's Exhibit 32 for identification be received in evidence.

Mr. Whitney: May I ask a question on voir dire?

The Court: Yes.

Mr. Whitney: With reference to Government's Exhibit 32 for identification, I notice the consignee is the Progressive Brokerage Company.

The Witness: That is right.

Q. (By Mr. Whitney): That has nothing to do with Mr. Hoffman?

A. No, that is my broker that I had to ship it back to.

Mr. Whitney: I object to it on the grounds it is immaterial and not binding on Mr. Hoffman.

(Testimony of R. O. Kelley.)

The Court: I really don't see the purpose of it myself.

Mr. Eubank: It is just to show the return of the peas, that is all.

The Court: Well, all right. It is immaterial.

The Clerk: Government's Exhibit 32 in evidence.

(Said Freight Bill was received in evidence and marked as Government's Exhibit 32.)

Q. (By Mr. Eubank): Now, Mr. Kelley, what was the loss to you of this return shipment?

Mr. La Prade: I object, your Honor. It is immaterial. [226]

The Court: Yes, I think so.

Mr. Eubank: All right.

Q. (By Mr. Eubank): On the telephone calls you have testified to, those are the only two calls you had with Mr. Hoffman, is that correct?

A. To the best of my knowledge, right now, it is.

Mr. Eubank: I have no further questions.

Cross-Examination

By Mr. La Prade:

Q. Mr. Kelley, as between yourself and your company, and the Hoffman Grocery Company, or Mr. Hoffman, isn't it true that those business negotiations commenced with your writing a letter to Mr. Hoffman? That is how you started doing business with Mr. Hoffman, isn't that right, sir?

A. That is right.

(Testimony of R. O. Kelley.)

Q. And you made a deal for a credit transaction, and later after shipping the merchandise you changed your mind, isn't that correct?

A. After finding out his credit rating, yes.

Q. And you testified that no reference was made over the phone with regard to his credit, I mean, Mr. Hoffman's credit? That wasn't discussed very much? There weren't any representations to you that he had an excellent credit rating, or anything of that sort, was there? [227]

A. No, there was not any mention of it.

Q. And as far as you are concerned, this is just a transaction where you changed your mind, and you got your merchandise back, isn't that right?

A. I got it back——

Q. Except for the inconvenience, but Mr. Hoffman didn't contact you in the first instance, did he?

A. No, he didn't contact me.

Q. Mr. Kelley, how many employees do you have in your office that might be engaged in secretarial work, or the type of work where they would be opening your mail?

A. I only have one bookkeeper regular. There is my wife helps at some times, and during my rush season, I have a lady helper that helps the bookkeeper.

Q. Referring to Government's Exhibit 30 in evidence, which purports to be a letter from Ben B. Hoffman to R. O. Kelley Company in Midville, Georgia, did you open that letter yourself?

A. Well, I rather think so. If I am away, the

(Testimony of R. O. Kelley.)

mail is opened by my bookkeeper. If I am there, I open all the mail, and to the best of my knowledge I opened that letter.

Q. But you are not sure?

A. Well, I am not definite sure, no.

Mr. La Prade: If your Honor please, at this time we move to strike from the record and from the evidence Government's [228] Exhibit 30, which has heretofore been admitted, upon the grounds there has been no foundation of showing—if the Court please, we will withdraw the objection I was just making, and stand upon the original objection when it was originally introduced.

That is all.

Redirect Examination

By Mr. Eubank:

Q. In regard to the question propounded to you by the counsel for the defendant, about this being the ordinary transaction, do you consider this the ordinary transaction, or did you consider this the ordinary transaction then when you got your peas back? A. No, sir.

Q. In the ordinary course of your business, would you explain how you give credit, and why you gave credit in this particular instance?

Mr. La Prade: If the court please, this is improper redirect. He has testified there was not any conversation with regard to credit.

The Court: I know, but I think you have opened all this up by your cross-examination.

(Testimony of R. O. Kelley.)

The Witness: What was that question?

Q. (By Mr. Eubank): Why did you give him the credit, or extend the credit? [229] Was it the fact that he was recommended to you?

A. Mr. Holmes from Holmes Canning Company, I thought he had all the information.

Q. And on that basis——

A. On that basis I didn't mention terms when the orders were given.

Mr. Eubank: No further questions.

Mr. Whitney: That is all.

The Court: You are excused.

(Witness excused.)

Mr. Eubank: Your Honor, at this time, I would like to request that we present one piece of testimony out of order. That is the testimony of Mr. Gavin of Gavin Brothers, and he is in the middle of Salmon season in Washington, and he tells me that he has numerous deals that are waiting upon his arrival back there. He was here yesterday, and I would like to if possible get him on today. The reason I am asking this is that he is the actual packager of the product, but he did not make the contractual arrangement with Mr. Hoffman. That was made through a broker.

The Court: All right.

T. J. GAVIN

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is T. J. Gavin? A. Right.

Q. And you are one of the Gavin brothers?

A. Gavin Brothers, Incorporated.

Q. And you were formerly in the Coleman Building?

A. That is right, Coleman Building, Seattle.

Q. Seattle, Washington? A. Yes.

Q. Where are you located now, Mr. Gavin?

A. 1500 West Lake Avenue North, in Seattle.

Q. What is the character of your business?

A. We are canned salmon sales agents.

Q. What does that entail?

A. We act as sales agents for a group of canned salmon packers in Alaska and various other areas. We handle the marketing, shipping, and invoicing, complete distribution of their packs of canned salmon.

Q. Do you package under any particular label?

A. Well, we have our own labels, and we sell a good deal of our distribution under buyers labels, private labels.

Q. Under what?

A. Buyers labels, as well as our own labels.

Q. Buyers?

(Testimony of T. J. Gavin.)

A. Buyers, B-u-y-e-r-s, wholesale grocers have their own [231] brands, you see.

Q. And you also sell under Gavin?

A. That is right. We sell our own labels, also.

Q. What are the names of the labels?

A. We have a number of brands of our own. We have a Gavin's brand, a Sea Ranger brand, Sea Leader brand, Dainty Miss, Challenger brand, just to name a few of them.

Q. Are all of those brands with your name, do they also have the name of the Gavin Brothers located on the can? A. Oh, yes, our name is on it.

Q. So that any particular sea fish that were packed by your organization could be identified by your name?

A. Well, yes, but we also ship sometimes under packers labels where it shows the packers' name on it.

Q. You are here under a subpoena duces tecum?

A. Yes.

Q. And we asked you to bring with you certain business records?

A. I am sorry, I can't quite hear you.

Q. You are here under subpoena duces tecum, and were asked to bring with you certain business records? A. That is right.

Q. Do you have those records with you?

A. I have them with me. (Handing to counsel.)

Q. These records relate to what particular transaction? [232]

A. These invoices and drafts, and enclosure re-

(Testimony of T. J. Gavin.)

ceipts that are attached to them, refer to shipments made by us to the Acme Distributing Company, whose address was given up as Tempe, Arizona.

Mr. Eubank: I ask that these three exhibits be marked for identification.

The Clerk: Government's Exhibits 33, 34 and 35 for identification.

(Said Gavin Brothers documents were marked as Government's Exhibits 33, 34 and 35, respectively, for identification.)

Q. (By Mr. Eubank): I show you Government's Exhibits 33, 34 and 35 for identification, and ask you if you recognize those documents?

A. Yes, I do.

Q. Would you look at it?

A. This first exhibit?

Q. Yes. How do you recognize that?

A. That is our draft No. 9547, and our invoice No. 967, covering the shipment of——

Q. That is O.K. That is good enough.

A. That is sufficient identification?

Q. Yes. And do you recognize the second one?

A. I signed the draft, yes, so I recognize it.

Q. Now, the next one, that is 34 you are identifying now? [233]

A. Our draft No. 9556, invoice No. 971. Another shipment, otherwise identical.

Q. Do you recognize that signature?

A. Yes. She is the duly authorized secretary of the corporation.

(Testimony of T. J. Gavin.)

Q. And you recognize her signature?

A. Yes, I recognize her signature.

Q. Now, in regard to Exhibit 33 for identification?

A. A similar set of documents, our shipping order, draft No. 9552, invoice No. 969.

Q. And you recognize that?

A. And it is similar. This is signed by the secretary. She is authorized to sign drafts, yes, sir.

Q. How are these documents kept in your business files?

A. These are the originals here, and when they are made out they are sent to the bank in Seattle, the bank we usually use for collection purposes. They are sent through bank channels to the destination city, in this case, Tempe, Arizona, through some bank, usually their correspondent, and they are sent there, and the buyer, the party, that is, the notified party on the draft known as the buyer or drawee, is notified the drafts are there, and normally he comes in and pays them.

Q. In this case, how does it happen that you have the original drafts?

A. Well, these were returned to us after due course by [234] the bank. There is one mention on there, the bank has a stamp on it——

Mr. Whitney: Wait a second.

The Court: It is not in evidence.

Mr. Eubank: It isn't in evidence.

Mr. Whitney: If the Court please, I don't know when he is going to attempt to introduce this, but

(Testimony of T. J. Gavin.)

there isn't an iota of charge in the indictment with reference to that transaction.

The Court: I don't know a thing about it. We will see more about it later. Go ahead.

Mr. Eubank: At this time, we offer Exhibits 33, 34 and 35 in evidence.

Mr. Whitney: Count IV of the Indictment which the United States Attorney called to my attention when I asked a moment ago charges that on the 14th of June, 1954, in the District of Arizona, the defendant Hoffman, for the purpose of executing a scheme, did by interstate wire telephone Grant-Whitman Company at Spokane, Washington, not Gavin Brothers, but Grant-Whitman.

When we asked for a bill of particulars to find out who was telephoned to, the answer came from the United States Attorney, Jack Ehlinger. That is on page 2 of the Bill of Particulars, so I say, your Honor, that this is not binding on the defendant.

It is immaterial, irrelevant, and incompetent to prove [235] anything in this case, as far as this Indictment and this Bill is concerned.

The Court: We haven't gone far enough yet.

Mr. Whitney: Pardon?

The Court: I don't know. I can't determine it yet. The objection will be overruled at this time. If they don't connect it up, it will be stricken.

Go ahead.

The Clerk: Government's Exhibits 33, 34 and 35 in evidence.

(Testimony of T. J. Gavin.)

(Said documents of Gavin Brothers were received in evidence and marked as Government's Exhibits 33, 34 and 35, respectively.)

Q. (By Mr. Eubank): Mr. Gavin, I show you Government's Exhibits 33, 34 and 35 in evidence. In regard to Exhibit 33 in evidence, will you tell who that shipment was made to?

A. Yes, I can. This is an original enclosure receipt showing that these goods were taken over by Canned Goods Shippers Association for their pool car shipping organization.

I might mention that in shipping canned goods, it is necessary to get the very best rate, so we have to ship our goods in maximum, I mean in minimum pool cars, or pool trucks.

This particular order was far less than the minimum pool truck, and such orders we call L.C.L. or L.T.L., less [236] than truckloads, which are pooled by this organization of Canned Goods Shippers to give the buyer the benefit of a lower rate, so this is an enclosure receipt in their truckload that was shipped from us by Canned Goods Shippers, as our agents, to the Acme Distributing Company, Tempe, Arizona, care of the American Consolidators, Los Angeles, California, who would forward the shipment from Los Angeles to Tempe. This is a receipt for that.

Q. I see. Now this Can-Go?

A. Our company is a member of that association.

(Testimony of T. J. Gavin.)

Q. And would shipments contain their name if received in this area?

A. Whose name, Can-Go?

Q. Can-Go.

A. Not necessarily, because in this particular case their carrier was West Coast Fast Freight to Los Angeles, and they have put on here, "Care of the American Consolidators," who are another pool car shipper, and they would take care of the shipment from Los Angeles to Arizona.

Q. Now, with respect to Government's Exhibit 34 in evidence, can you tell whether that draft was on a certain person, who the shipment was made to?

A. Except for the fact it is a different quantity and a different valuation, it is identical. It is a different date. This date was—here is the shipping date, June 28, 1954. [237]

Q. That is Exhibit 34?

A. Exhibit 34. Shipped June 28th. Shipped the same date, two different enclosures, went in the same truck, shipped on the same date from Seattle.

Q. This shipment was to whom?

A. It is the same consignee, same shipper, care of American Consolidators, Los Angeles, to Acme Distributing Company, Tempe, Arizona, and it is properly made out.

Q. And these signatures down here?

A. That is the secretary of the Can-Go Shipping Association, who signed all of those.

Q. Now, in regard to plaintiff's Exhibit 35?

A. This is a similar set of papers. It covers a

(Testimony of T. J. Gavin.)

shipment of a different quantity, and different valuation, on June 19th, which was the first shipment we made to them.

Q. What year?

A. It is also shown, same routing.

Q. What is the year? A. 1954.

Q. And who is it to?

A. Shipped to Acme Distributing Company, Tempe, Arizona, care of American Consolidators, at Los Angeles, and it is properly signed, a similar document right down the line.

Q. All of these three exhibits have this original draft on. Can you explain the reason for that? [238]

A. You mean why that is here?

Q. That is right.

A. Well, ordinarily, we rarely get these back. The original draft that goes to the bank for the customer to pay it, the customer would have the draft to be paid. The reason we have these is because he didn't pay it.

Q. Are these, to your knowledge, the shipments made to Acme Distributing Company by your company?

A. That is exactly the shipments, yes.

Q. These are the shipments?

A. Yes.

Q. Who was your agent for these shipments, or who contracted the shipments?

A. You will have to ask that a little differently, because we don't have any agent contracting for us.

(Testimony of T. J. Gavin.)

Q. Did you contact Mr. Ben Hoffman directly in regard to this shipment?

A. I never have, no.

Mr. Whitney: What was that answer?

The Witness: I never have, no.

Q. (By Mr. Eubank): Who did contact Mr. Hoffman?

A. We were working with a broker in Spokane, Washington. We have brokers in many places throughout the United States.

It so happens in Spokane, Washington, we were working [239] with a broker known as Grant-Whitman, who are engaged as food brokers, selling for various people, and this business was first offered to us by him through phone calls or orders he had received from Acme Distributing Company.

Q. Who did you talk to in particular in Grant-Whitman Company? A. Mr. Jack Ehlinger.

Q. And as far as the terms of payment were concerned, those documents there, do they contain the terms of payment as conveyed to you by Grant-Whitman Company?

A. Those drafts are drawn payable ten days after date of shipment, and that was the basis upon which the goods were sold.

Q. Now, let's see. Looking at these freight bills, can you tell us the total amount shipped, and the cost? I mean, the charge that you made?

A. You mean the amount of our invoices?

Q. That is right.

(Testimony of T. J. Gavin.)

A. The first invoice is for an amount of \$8,289.99.
That covers——

Q. That is all right. Just the total amount.

A. 350 cases of canned salmon.

Q. Okay. That is on exhibit 35?

A. 35.

Q. Now, in regard to exhibit 34? [240]

A. 34, that covers 200 cases of canned salmon, and 100 cases of canned crabmeat, and the total amount of that invoice is \$6,824.58.

Q. And in regard to Government's Exhibit 33?

A. That covers a total of 200 cases of canned salmon. Pardon me, a total of 300 cases of canned tuna fish, and the total amount of the invoice was \$4,423.45.

Q. Have you ever collected any of the money represented by these billings?

A. No, we have never collected any of the money of those invoices.

Q. Did you ever recover any of the goods, any of the salmon, the shipped fish?

A. None of the salmon, no. I might mention, if it is a mere technicality, for some unknown reason he shipped back a good part of the small shipment of crabmeat made to him. We never did know why.

Mr. Eubank: No further questions.

Cross-Examination

By Mr. Whitney:

Q. Mr. Gavin, you operate from Seattle?

A. Right.

(Testimony of T. J. Gavin.)

Q. And these orders, or, rather, these bills and drafts in your name, being Exhibits 33, 34, and 35, which you are familiar with? [241]

A. Yes.

Q. These were orders placed with you by Grant-Whitman of Spokane?

A. They were submitted to us for our confirmation, correct. We confirmed them, we covered them by our usual sales contracts.

Q. I see. But the orders came to you through Grant-Whitman & Company?

A. That is right.

Q. And none of them came from Hoffman?

A. What?

Q. None of them came from Mr. Hoffman?

A. I didn't know who Mr. Hoffman was at the time. He was given to me as Acme Distributing Company. That is all I knew.

Q. Did anyone from the Acme Distributing Company call you up? A. They did not.

Q. In other words, all the dealings were done through Grant-Whitman Company?

A. I made mention to you that is quite the normal way the canned goods are sold. The buyer ever rarely contacts anyone like us. They contact a broker in the field, and the broker sends them to us, and that is normal.

Q. That is done in the regular course of business? [242] A. That is correct.

Q. The only point I make, you had no direct contact with Acme Distributing Company ?

(Testimony of T. J. Gavin.)

A. No, we had no direct contact with Acme.

Q. You say you haven't been paid anything by Mr. Hoffman?

A. By Acme Distributing Company.

Q. You have a suit pending in this court for the amount of those bills?

A. I say we have not been paid anything.

Q. You have got a suit pending in this court for that bill, a civil suit, isn't that right?

A. We have? I can't say we have one pending. You mean a civil suit?

Q. One was filed, wasn't it?

A. Yes, a civil suit is being prepared, that is correct.

Q. In other words, you were transacting credit business, and didn't get paid, and finally had to sue for your money, and haven't been paid yet?

A. We haven't been paid yet, no.

Q. The suit has never been determined yet, the civil suit?

A. I can't answer that to you. I think that is an improper question, because the suit hasn't been filed. It hasn't been determined, no.

Q. Are you acquainted with a law firm in Seattle by the [243] name of Nixon & Hove?

A. Sir?

Q. Are you acquainted with a law firm called Nixon & Hove? A. Yes, I know them.

Q. Are they your attorneys?

A. Well, they have handled some business for us at times.

(Testimony of T. J. Gavin.)

Q. You know they had written out here in connection with this bill?

A. I would have to identify it before I would say I know about it. I don't know what you might be referring to.

Q. You didn't know that they threatened that if they didn't collect this bill they would turn it over to the Federal Government?

A. I question that very much. No, I don't believe they did. I would say they did not do it, very definitely. I don't ever remember any such matter.

Mr. Whitney: Mark this for identification, please.

The Clerk: Defendant's Exhibit C for identification.

(Said document was marked as Defendant's Exhibit C for identification.)

Q. (By Mr. Whitney): Mr. Gavin, referring to Defendant's Exhibit C for identification, you are acquainted with Mr. Nixon's signature?

A. Yes. I would be safe in saying that was his signature, yes. [244]

Q. You stated that you were sure he had never said anything about if he didn't collect this bill, he was to put this in the hands of the Federal attorneys?

A. Wait a minute. You asked me a question, and I answered it. You said was I familiar with the fact that he threatened that if it wasn't paid he would

(Testimony of T. J. Gavin.)

turn it over to the Federal authorities, and I answered no I wasn't.

Mr. Whitney: Will you read that last, please?

(Record read, as requested.)

The Court: That isn't in evidence, is it?

Mr. Whitney: I will offer it in evidence.

Mr. Eubank: I object to its being admitted.

The Court: Yes. I don't see what it has to do with this. Objection sustained.

Q. (By Mr. Whitney): Of course, I realize you are not responsible for what your attorneys made, right?

A. Well, I wouldn't say that entirely I am familiar with it sometimes. I answered your question, and I am sure that I think I answered it correctly.

Q. Inasmuch as this bill was, or rather, this order was put in for Grant-Whitman and Company of Spokane after Hoffman, or the Acme declined to pay for the canned goods, did you have a settlement with Grant-Whitman in connection with the matter?

A. Well, you must understand our relationship with [245] Grant-Whitman Company.

Q. What is it?

A. They were to be paid a sales commission by us on completion of this sale, and like we do with any of our other brokers, there was never any settlement with them, there was no commission paid them, because the transaction wasn't completed. This buyer didn't pay for his merchandise.

(Testimony of T. J. Gavin.)

We never got our commission from our canner. All we have been out is a number of thousands of dollars. As far as Grant-Whitman is concerned, they have been put to considerable expense and a very complete investigation of the whole thing. There was no settlement. There was no earnings, in other words.

Q. They haven't settled with you in any way?

A. Who would settle with me?

Q. Grant-Whitman.

A. They would have no reason to settle with me. If the sale had been completed, we would give them a commission check for the sale they made for us.

Mr. Whitney: That is all.

The Witness: Is that all?

Mr. Whitney: Yes.

Mr. Eubank: One further question.

Redirect Examination

By Mr. Eubank: [246]

Q. The case that you were referring to, and counsel referred to in the civil court, is that against Mr. Ben Hoffman, or against another person?

A. All I can say, I wouldn't want to say anything that is incorrect, because as far as I know the attorneys we have retained, they may have filed it. Really, I can't say that, but it is a conspiracy, that is, it is against Acme Distributing and Ben Hoffman, and two people by the name of Keeton, who operate super-markets, and we had quite an investigation made tracing the goods where they went.

Mr. Eubank: That is all. No further questions.

The Court: That is all now for Mr. Gavin?

Mr. Whitney: Yes.

The Court: That will be all.

(Witness excused.)

The Court: The Court will recess until ten o'clock in the morning.

(Whereupon, Court was adjourned to the following day, September 20, 1956.) [247]

Thursday, September 20, 1956—10 A.M.

Before Judge Ling and a Jury.

Court convened pursuant to adjournment.

Present:

Mr. Eubank, appeared for Government.

Mr. Whitney, Mr. La Prade, appeared for Defendant.

The Court: Call your next witness.

Mr. Eubank: Mr. O. E. Sexton.

O. E. SEXTON

called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is O. E. Sexton?

A. Yes, sir, it is.

(Testimony of O. E. Sexton.)

Q. And you are a fruit stand operator?

A. Yes, sir.

Q. Operating as Ed's Fruit Stand?

A. Yes, sir. [248]

Q. At 1745 East Apache? A. Yes, sir.

Q. And that is in Tempe? A. Tempe.

Q. Now, Mr. Sexton, do you know the name of Ben B. Hoffman? A. Yes, sir.

Q. Do you know the name of Acme Distributing Company? A. Yes, sir.

Q. Do you recognize Mr. Hoffman in this courtroom this morning? A. Yes, sir, I do.

Q. Will you point him out to the jury?

A. Right in the back seat (indicating.)

Q. Right here? A. Yes, sir.

Q. In relation to Mr. Hoffman and dates, did you purchase any dates from Mr. Hoffman?

A. Yes, sir, I did.

Q. Do you recall the types of dates?

A. Well, sir, Adeglis-Norris is all I know.

Q. Do you recall when you purchased these dates, approximately?

A. Well, approximately in December, 1954.

Q. I show you Government's Exhibits 25, 16, and 17 in [249] evidence, and ask you if you recognize these brands of dates? A. Yes, sir, I do.

Q. Do you recognize Government's Exhibit 17, this one?

A. This one, yes, sir, I do. I still have some of them.

Q. Do you recognize Government's Exhibit 16?

(Testimony of O. E. Sexton.)

A. Yes, sir, I had some of those.

Q. Do you recognize Government's Exhibit 25?

A. Yes, sir, I had some of those.

Q. Now, these types of dates, who did you buy them from? A. Mr. Hoffman.

Q. Did you buy them from anyone else?

A. No, sir, I didn't.

Q. Do you recall the price that you paid for those dates?

Mr. Whitney: I object to it as immaterial.

The Court: He may answer.

Q. (By Mr. Eubank): Do you recall the price you paid for those dates?

A. Well, not specifically. I paid approximately 10 to 12c a pound.

Q. How do you know that, Mr. Sexton?

A. Well, I was looking at the dates at the time. If I hadn't have known what I paid for them, I wouldn't have bought them.

Q. And it is your testimony that you wouldn't have exceeded that amount in payment, is that correct? [250]

A. Well, no, sir. I wouldn't, because I could have bought dates for the same price, or cheaper.

Q. Where? In this area? A. Yes, sir.

Mr. Eubank: No further questions.

Mr. La Prade: No questions.

The Court: That will be all.

Mr. Eubank: May this witness be excused?

The Court: He may be.

(Witness excused.)

Mr. Eubank: I will call Bill Clark.

WILLIAM CLARK

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is William Clark?

A. That is right.

Q. And you are the operator of Clark's Dates?

A. Clark's Citrus and Dates.

Q. At 4803 East Thomas?

A. That is right.

Q. In Phoenix, Arizona? A. Yes.

Q. As I understand it, Mr. Clark, you are both
a retail [251] seller and a grower?

A. Yes, sir.

Q. And you have your own date gardens?

A. Yes.

Q. And you also package dates? A. Yes.

Q. Now, do you recognize the name of Ben B.
Hoffman? A. Yes.

Q. Or Acme Distributing Company?

A. I don't know anything about Acme Distribut-
ing Company.

Q. Do you see Mr. Hoffman in this courtroom?

A. Yes.

Q. Can you point him out to the jury, please?

A. Yes.

Q. Would you? A. (Witness indicates.)

(Testimony of William Clark.)

Q. And describe him so they will know who you are referring to?

A. Sitting over there in the brown coat and striped tie.

Q. Now, Mr. Clark, in regards to Mr. Hoffman, did he attempt at any time to sell you any dates?

A. Yes, he did.

Q. What date was that?

A. It was along in November of 1954, the way I remember it.

Q. And do you recall the name of the brand, the brand [252] name of the particular date?

A. It was Long's dates, and some Gold Cup date packs out of California.

Q. I show you Government's Exhibits in evidence 6, 17, and 16, and ask you if you recognize these exhibits. First, Government's Exhibit 16 in evidence? A. This one I didn't see here.

Q. You didn't see that one. Government's Exhibit 17 in evidence? A. This one I did.

Q. You saw that one. And Government's Exhibit 6 in evidence? A. And this one.

Q. Now, in regard to those particular dates, did you purchase any of those? A. No, I didn't.

Q. From Mr. Hoffman. What was the price he quoted for these particular dates?

Mr. Whitney: Just a minute.

The Court: He may answer.

The Witness: As I remember, it was around 12c a pound.

Q. (By Mr. Eubank): You said that you were

(Testimony of William Clark.)

a grower and operator of dates, was there any reason that you, or was that price similar to [253] the market at that time?

A. Well, the price was a whole lot lower than the existing market, but I didn't buy them because I raise Arizona dates, and I don't handle California dates unless I have to.

Q. You say it was lower than the Arizona market? A. Yes.

Q. Was the date itself lower the Arizona date?

A. Well, every Arizona date grower considers Arizona dates superior to California dates, because we just raise more softer varieties, and mostly it is a hydrated date in California.

Q. At that time, do you recall what the Arizona market was for a similar date?

A. I was getting around 45c a pound retail for what we call a commercial date in a one-pound berry basket.

We have a gift grade, No. 1 fancy grade, which brings a lot more than that, but our commercial grade that compares with that was 45c a pound.

Q. In regard to the packaging of a date like that, is it possible to buy dates in bulk at a much lower figure than in package? A. Yes, it is.

Q. Now, assuming that, well, at the market at that time, what could you have bought bulk dates for, for a heavy quantity?

Mr. Whitney: I object to that as [254] immaterial.

(Testimony of William Clark.)

The Court: Yes, what difference does it make?

Q. (By Mr. Eubank): As a result of the conversation with Mr. Hoffman, did you purchase any merchandise from him?

A. I bought some Christmas candy, hard candy from him, and some dried fruit packs.

Q. Did you make any other purchases from Mr. Hoffman? A. No, that was all.

Q. And did you make any before that time, that you recall?

A. I think he was there two different times, but actually it was only one purchase.

Q. Did he offer any type of a selling arrangement with you?

A. He offered to leave a lot of stuff on consignment.

Q. And did you accept that proposition?

A. No.

Mr. Eubank: No further questions.

Mr. Whitney: No questions.

The Court: That will be all.

(Witness excused.)

Mr. Eubank: The next witness is Bill Allen.

BILL ALLEN

called as a witness in behalf of the Government,
having been first duly sworn, testified as [255]
follows:

Direct Examination

By Mr. Eubank:

Q. You are Mr. Bill Allen? A. Yes, sir.

Q. And you are the foreman of the Crystal Ice
Plant? A. Yes, sir.

Q. And the location of that plant is at 246
South 2nd Avenue?

A. That is the office address.

Q. At Phoenix, Arizona? A. Yes.

Q. Where is the warehouse located?

A. Did you say 242 or 246?

Q. 246. A. 246 is the warehouse.

Q. And is that the place that you are stationed?

A. Yes, sir.

Q. Now, in your capacity as the foreman of
Crystal Ice, what records do you keep?

A. Complete.

Q. What type of records?

A. Well, both incoming and outgoing records.

Q. And that pertains to what type of storage?

A. Either freezer items, or cooler items.

Q. And a customer of your warehouse, would you
explain to the jury what happens to his product
when it is delivered into [256] your hands?

A. Well, the customer brings the material or
merchandise in, and I write him a receipt for it and

(Testimony of Bill Allen.)

store it, whether it be freezer or cooler, and issue it out to the customer as he comes in for it.

Q. And when the customer comes and picks up the stored items, how does your record acknowledge that he has received the items?

A. By his signature.

Mr. Whitney: I beg your pardon?

The Witness: By the customer's signature.

Q. (By Mr. Eubank): Now, you are here this morning under a subpoena duces tecum, is that correct? A. Yes, sir.

Q. And we asked you to bring the records that you had pertaining to Mr. Ben B. Hoffman and Acme Distributing Company? A. Yes, sir.

Q. Do you know Mr. Ben B. Hoffman?

A. I have done business with him quite a while.

Q. Do you see him in this room?

A. Yes, sir.

Q. Would you point him out to the jury, please?

A. (Indicating): It is the fellow in the brown coat and white shirt. [257]

Q. Now, in regard to the records that you brought with you, do you have specific records showing the storage of products by Mr. Hoffman? In particular, dates.

A. Were you interested in his incoming receipts, or outgoing tickets?

Q. Incoming receipts? A. Yes, sir, I have.

Q. Is the information on this receipt posted to that card? A. Yes, sir.

Q. And in the posting from this receipt to the

(Testimony of Bill Allen.)

card, is that done at the time, or the approximate time that the merchandise is put into your storage?

A. At my earliest convenience. It might possibly be three or four hours later.

Mr. Whitney: If the Court please, I wish to make an objection to all this line of testimony, on the grounds that it is incompetent to prove any issue in this case, and it is immaterial where they stored it.

The Court: I don't know a thing about it. We will find out.

Q. (By Mr. Eubank): If this is posted to those cards, let us just use the cards then.

A. All right, sir.

Q. Now, you have said that these postings are made at or [258] near the time that the goods are received, is that correct?

A. At my earliest convenience.

Q. Do these cards reflect, to your knowledge, the true transactions, as far as the storage of the materials?

A. Yes, sir, they do.

Q. And they are part of your company records?

A. They are.

Q. And they have been in your custody, is that correct?

A. Yes, sir.

Q. Now, will you give me the ones that deal with dates?

A. That would be those four there, would be dates.

Q. May these cards be marked Government's Exhibits 36, and 36-A to F for identification?

(Testimony of Bill Allen.)

A. That is not complete. Here is more of the same.

Q. Are there more dates?

A. That is dates and candies. Dates and candied fruits.

The Clerk: Government's Exhibits 36, and 36-A to G, inclusive, for identification.

(Said documents from Crystal Ice were marked as Government's Exhibits 36, 36-A to G, inclusive, for identification.)

Q. (By Mr. Eubank): I show you Government's Exhibits 36, 36-A through 36-G, inclusive, and ask you if you can identify those cards?

A. Yes, sir, I can. [259]

Q. How can you identify them?

A. It is in my own writing.

Q. And were these the ones you brought with you this morning?

A. They are, yes.

Q. And these are what documents, as far as your company is concerned?

A. I wouldn't say that it was complete. I didn't have time enough to compile everything, but that will cover the larger part of it.

Q. You are referring to the number of cards taken out of the files, is that correct?

A. Yes.

Q. But as far as the information on these, the information, is it complete, the information on each card?

A. I believe that part of it would be complete, but as far as his outgoing tickets are concerned, I

(Testimony of Bill Allen.)

wouldn't have his signatures on everything he received.

Mr. Eubank: I offer Government's Exhibits 36, and 36-A through 36-G, inclusive, in evidence.

Mr. Whitney: May I ask one question?

The Court: Yes.

Mr. Whitney: Do you know, Mr. Witness, where these dates came from?

The Witness: Sir? [260]

Mr. Whitney: Do you know where these dates came from?

The Witness: No, I couldn't say that.

Mr. Whitney: If the Court pleases, some of these exhibits go to dates that are completely without the dates in the Indictment. We object to them on the further grounds that they are incompetent to prove any issue in this case, and are wholly immaterial.

This I am referring to as Government's Exhibit 36 for identification.

Mr. Eubank: This will serve several purposes, your Honor. One is identification further of Ben Hoffman. It will serve that because the next documents that relate to these particular records of original entry are all signed by Mr. Hoffman as Acme Distributing Company. The dates also are in proximity of the shipments from both Long and C. A. Glass, and I think that it will tie in.

The Court: Go ahead. We will see what you have when you get through.

(Testimony of Bill Allen.)

The Clerk: Government's Exhibits 36, and 36-A to G, inclusive, in evidence.

(Said documents from Crystal Ice were marked as Government's Exhibits 36, 36-A to G, inclusive, in evidence.)

Q. (By Mr. Eubank): I show you Government's Exhibits in evidence 36, and [261] 36-A through G, and ask you from this document if you can identify several outgoing receipts in your book?

A. Yes, sir. Between those cards and these, I have 16 transactions, through the month of November of 1954.

Q. So all outgoing dates marked here, you can find them in there, is that correct?

A. Yes, sir.

Q. Now, for example, we don't want to take all of these, but let us take a couple of them, anyway. Is this the outgoing date? A. Yes, sir.

Q. Let us try this, November 9th, 1954?

A. Ticket No. 1331.

Mr. Eubank: All right.

The Court: What are you referring to now? Is that book in evidence?

Mr. Eubank: Yes, I was going to have him choose several of these at random, and then we would enter those in evidence.

The Court: All right.

Q. (By Mr. Eubank): All right, let us take another card here. First, in referring to Government's Exhibit 36 in evidence, this number, this outgoing

(Testimony of Bill Allen.)

receipt, how do you go from your card here to your outgoing receipts?

A. Well, I take into consideration your lot number here, [262] 1195. 1195 consisted of 25 cases——

Mr. Whitney: Just a minute, has that been marked for identification yet, so we know what we are talking about?

Mr. Eubank: I am having him pick a couple of these, so we can mark them for identification. I didn't want to enter the whole book. Is that satisfactory, Mr. Whitney?

Mr. Whitney: I guess so.

Mr. Eubank: Then we won't be bothered with so many of these things.

Q. (By Mr. Eubank): What about this number here? A. That is the one I have here.

Q. Is that the way you identify the transaction?

A. Yes, sir.

Q. What would you call that number?

A. That is the outgoing ticket number.

Q. Now, in regard to this card, what is the card number? A. 1196.

Q. That is Government's Exhibit 36. Now, would you find this ticket number? A. Yes.

Q. Now, would it be your testimony, if we went on through these things, and through all of these folio numbers, we would find a receipt in there in numerical order, is that correct?

A. I believe you would, yes. [263]

Q. Would you, or wouldn't you?

A. Well, I didn't have time enough to go through

(Testimony of Bill Allen.)

all of those records. I was only notified after five o'clock last night. But the bigger part of them you will find listed in this book here.

Mr. Eubank: I would like just these two receipts marked as Government's Exhibits 37 and 38 for identification, 1331 and 1338.

The Clerk: Government's Exhibits 37 and 38 for identification.

(Said Delivery Record Sheets were marked as Government's Exhibits 37 and 38 for identification, respectively.)

Q. (By Mr. Eubank): I show you Government's Exhibits 37 and 38 for identification, and ask you if you recognize these documents?

A. I do.

Q. Now, Government's Exhibit 37, you recognize that document?

A. Yes, sir, I do.

Q. How do you recognize it?

A. I recognize it by my own handwriting, and the customer's name.

Q. And is this the form that your company uses?

A. Yes, sir, it is. [264]

Q. And are they still using it?

A. Yes, sir.

Q. I show you Government's Exhibit 38 for identification, and ask you if you recognize that document?

A. I do.

Q. And how do you recognize this document?

A. By my handwriting, the customer's signature.

Mr. Eubank: Now I ask that Government's Ex-

(Testimony of Bill Allen.)

hibits 37 and 38 for identification be entered in evidence.

Mr. Whitney: If the Court please, we make the same objection to Government's Exhibit 37 for identification and 38 for identification that was made to Government's Exhibit 36 for identification, with the further objection that there appears items on here that don't relate to dates at all. For instance, candy and fruit.

The Court: Well, does it show any dates on there?

Mr. Eubank: Yes, sir, on Government's Exhibit 37 for identification, there are one, two, three, four date entries. One of them is four cases of 12 3-pound, 38 cases of 1-pound, 1 five-pound, and four, what would that be besides four something dates. That is in regard to Government's Exhibit 37.

In regard to Government's Exhibit 38, there are 25 cases of 24 1-pound's, 50 cases of 12 3-pound's, and 20 cases of 24 eight, dates with cocoanut, cases of 24, eight.

Mr. Whitney: They are not identified with any particular [265] dates.

The Court: Were those withdrawn from storage, or placed in storage?

Mr. Eubank: This is the withdrawing receipt.

Mr. Whitney: It is immaterial.

The Court: Do you have the others that show the deposit?

Mr. Eubank: Yes, sir, the original entry shows the deposit.

(Testimony of Bill Allen.)

The Court: How can you tie the two together?

Mr. Eubank: Well, the two are tied together by these numbers, the receipt number.

The Court: Do they correspond?

Mr. Eubank: That is right, sir.

The Court: All right.

The Clerk: Government's Exhibits 37 and 38 in evidence.

(Said Delivery Record Sheets were received in evidence and marked as Government's Exhibits 37 and 38, respectively.)

Q. (By Mr. Eubank): Now, I show you Government's Exhibits 37 and 38 in evidence, and ask you if you recognize the customer's signature?

A. I do, yes, sir.

Q. In regard to Government's Exhibit 37 in evidence? A. Yes, sir.

Q. And in Government's Exhibit 38 in evidence?

A. I do, yes. [266]

Q. And what signature is that?

A. That is Benjamin H, I believe, Hoffman. Ben Hoffman.

Q. Now, did this, did the person that signed this sign these before you? A. Yes, sir.

Q. Is that gentleman the same one that you identified to the jury earlier?

A. Yes, the same.

Mr. Eubank: No further questions.

Mr. Whitney: No questions.

(Witness excused.)

Mr. Eubank: As the next witness, I would like to call Mr. Jack Ehlinger.

JACK J. EHLINGER

called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is John J. Ehlinger?

A. That is correct.

Q. And you are with the Grant-Whitman Company?

A. Yes, sir.

Q. In what capacity was that?

A. I was the manager.

Q. That company is located on Gray [267] Avenue?

A. Yes.

Q. Spokane, Washington?

A. Spokane, Washington.

Q. How long have you been with the Grant-Whitman Company?

A. Since its foundation. I helped to organize the company.

Q. Do you recognize the name of Ben B. Hoffman?

A. Yes, I do.

Q. Do you recognize the name of Acme Distributing Company?

A. Yes, I do.

Q. Have you ever met Mr. Hoffman personally?

A. No, I haven't.

Q. In regard to Mr. Hoffman, how did you personally learn of the name?

(Testimony of Jack J. Ehlinger.)

A. I first learned of the name through a collect phone call, and while I had my records, as I recall, the first call was on June 14th of 1954.

Q. Do you have a record whereby you could tell the exact date of that phone call?

A. Oh, yes, may I get them? I can identify those, but I have a record in my briefcase, likewise.

Mr. Eubank: Would you mark these Government's Exhibit 39 for identification?

The Clerk: Government's Exhibit 39 for identification.

(Said telephone bills were marked as Government's Exhibit 39 for identification.) [268]

Q. (By Mr. Eubank): I show you Government's Exhibit 39 for identification, and ask you if you recognize that document?

A. Yes. You will notice that I marked——

Q. Wait a minute. How do you recognize the document?

A. It is an original receipted bill from the Pacific Telephone and Telegraph Company.

Q. Who was the bill to?

A. It was billed to Grant-Whitman Company.

Q. Are there any distinguishing marks on the thing that identify it as the bill?

A. Specifically, from a tie-in with our records, of which you have a record, and the dates of these calls which it will show I marked for Phoenix, we have done no business in Phoenix other than these transactions.

(Testimony of Jack J. Ehlinger.)

Q. Now, look at the other pages of the document there and make sure that it is all the same.

A. No calls on this page. But they are marked as to date. There are two calls on this page, on June 18th.

There are several calls on this page, June 19, June 23, and again on June 17th.

Q. And the calls listed in this relate to the calls or call from whom?

A. From Mr. Hoffman.

Mr. Whitney: You mean calls from people who said they [269] were Mr. Hoffman, is that what you mean? You have never talked to him?

The Court: Don't debate that now.

Mr. Eubank: I offer Government's Exhibit 39 for identification in evidence.

Mr. Whitney: Objection on the grounds that a telephone call with the person calling has not been properly identified.

The Witness: May I add something?

The Court: No, be quiet. Answer the questions asked you.

It may be received.

(Said telephone bills were received in evidence and marked as Government's Exhibit 39.)

Q. (By Mr. Eubank): Now, I show you Government's Exhibit 39 in evidence, and ask you if you can state the exact dates? Fix the exact date of your first call.

A. The date of the first call was June 14th.

(Testimony of Jack J. Ehlinger.)

Q. That was from whom?

A. It was from a man that represented himself as Ben Hoffman of the Acme Distributing Company.

Q. And by referring to that toll slip, can you tell us the place from which that call was placed?

A. That was placed from Phoenix.

Q. And did you receive any calls subsequent to that time from the same person? [270]

A. I did.

Q. Would you please give the jury the dates of those calls, and whether they were collect or prepaid.

A. On June 14th, we received a call from Phoenix. On June 21st—

Q. Was that collect or prepaid?

A. These were all collect.

On June 21st, we received two calls from Phoenix, and those can be explained. On June 19th we received a call from Phoenix.

On June 23rd we received a call from Phoenix. On June 17th we received a call from Phoenix, and on June 18th, two calls from Phoenix. And several of these calls—

Mr. Whitney: I object to any calls outside of the call on June 14, 1954, charged in the Indictment.

The Witness: I requested Mr. Hoffman—

Mr. Eubank: No, pardon me. I will ask the questions.

The Witness: Pardon me.

Q. (By Mr. Eubank): With regard to these

(Testimony of Jack J. Ehlinger.)

calls, did you receive any other telephone calls from Mr. Hoffman?

A. No, not to my knowledge.

Q. Now, regarding the first telephone call on June 14th, would you relate to the jury how the person represented himself? First, who he was and who he represented? [271]

A. The person represented himself——

Mr. Whitney: Wait a minute, I object on the grounds that the caller has not been identified. They have not put in any evidence from what phone this was from, except that he said so and so.

The Court: The caller said he was Hoffman. Isn't that true, Mr. Witness?

The Witness: Yes, sir.

The Court: All right, go ahead.

Q. (By Mr. Eubank): Now, explain just how he identified himself.

A. He identified himself as Mr. Hoffman of the Acme Distributing Company.

Q. Where? A. At Tempe, Arizona.

Q. Now, in regard to that, what did he inquire about?

A. He was inquiring for prices of salmon, and as a broker, we, of course, would check with our source of supply, and I told Mr. Hoffman——

Mr. Whitney: Wait a minute, not what you did, but what Mr. Hoffman did.

The Court: He is telling what he told Mr. Hoffman. Go ahead.

The Witness: I told Mr. Hoffman we would

(Testimony of Jack J. Ehlinger.)

Q. Yes.

A. Would you like to have me present it to you?

Q. Could we remove this? A. Yes.

Q. How was this copy of this telegram come about? How did you get this copy of the telegram?

A. Any wires that we transmit, we retain copies for our office records.

Mr. Eubank: I would like to have this marked as Government's Exhibit 40 for identification.

The Clerk: Government's Exhibit 40 for identification.

(Said copy of telegram was marked as Government's Exhibit 40 for identification.)

Q. (By Mr. Eubank): I show you Government's Exhibit 40 for identification and ask you if you recognize this document? A. Yes, I do.

Q. Is that the document you were just describing to us? A. Yes, it is.

Q. How do you recognize it? [275]

A. Well, I recognize it in several methods. In the first place, I dicatated it. In the second place, you will notice Western Union Night Letter, Paid, addressed to Acme, in this instance at his Arizona address.

I recognize it from the reference to the phone conversation, and the quotation on the commodity that we transmitted to Arizona.

Q. Will you tell the jury the possession of this document?

(Testimony of Jack J. Ehlinger.)

A. This document has been in my possession, of course, since it was transmitted. The original, of course, is in Mr. Hoffman's possession.

Mr. Eubank: I ask that Government's Exhibit 40 for identification be entered in evidence.

Mr. Whitney: We object to it, that it is not an event recited in the Indictment charged.

The Court: It may be admitted.

(Said copy of telegram was received in evidence and marked as Government's Exhibit 40.)

Q. (By Mr. Eubank): Now, showing you Government's Exhibit 40 in evidence, I ask you, will you read to the jury the terms that are contained in the telegram?

A. Shall I just read the telegram?

Q. Yes, just read that.

A. We say "Re phone," in other words, the original conversation. [276]

Q. That is all right.

A. "Endeavoring to locate pinks," that is pink salmon. "——which extremely scarce. Can offer good quality Reds talls 27.50 have Halves Reds 18.00 case fob Seattle prompt shipment wire reply."

Q. Now, did a reply come by wire?

A. No, we had no reply other than by phone.

Q. Now, this phone call, which in number was this? Was this the second phone call from him?

A. That would be the second phone call.

Q. In regard to that phone call, will you relate the conversation with Mr. Hoffman at that time?

(Testimony of Jack J. Ehlinger.)

A. As nearly as——

Mr. Whitney: Is that the phone call of June 14th?

Mr. Eubank: This is the next phone call.

The Witness: What is the date of that wire?

Q. (By Mr. Eubank): I show you Government's Exhibit 39 in evidence.

A. It would be on June 15th.

Q. Now, in regard to the conversation with Mr. Hoffman on that day, what was said? First, how did he identify himself again?

A. He identified himself as Mr. Hoffman, and I recall this quite specifically. Let me go back. Mr. Hoffman [277] acknowledged the transmission of these prices, because he said that the prices were satisfactory, and to ship a specific quantity of Tall Reds.

Q. Do you recall the specific quantity?

A. I believe on that first shipment, yes, I can tell you that exactly.

Q. Can you tell us by referring to your memorandum?

A. From our sales memorandum?

Q. Yes. A. Yes, I could.

Q. Would you mark this Government's Exhibits 41, 41-A, B, C, and D for identification?

The Clerk: Government's Exhibits 41, 41-A, B, C, and D for identification.

(Said Sales Memos were marked as Government's Exhibits 41, 41-A, B, C, and D for identification.)

(Testimony of Jack J. Ehlinger.)

Q. (By Mr. Eubank): I show you Government's Exhibits 41, 41-A, B, C, and D, and ask you if you recognize these documents?

A. Yes, I do. This is the memorandum——

Q. Just a minute. How do you recognize those documents? A. How?

Q. Yes.

A. They are our uniform memorandum of sale.

Q. Is this the form of your company? [278]

A. This is the form we utilize in transmitting orders.

Q. And in this particular case, is there any other identifying feature on there that you are able to recognize?

A. We always show Sold for the Account of a specific shipper, which was Gavin, Buyer's Purchase Order Number. Hoffman-phone.

Q. Will you please relate to the jury how these records are used in the set-up of your company?

A. These records are transmitted, we maintain copies, of which this happens to be a copy of that transaction.

The original goes to the shipper. The shipper, if he accepts the business, fills in the basis of the information on our Sales Memorandum. Then to identify our Sales Memorandum with that shipment, we receive a copy of the invoice back from the shipper, and you will notice Number 101 is tied in to Mr. Gavin——

Q. Just a minute.

A. Pardon me.

(Testimony of Jack J. Ehlinger.)

Q. And where are these records kept in relation to your office? In what kind of filing order?

A. I don't think I understand.

Q. In the files of your company, how are these records kept?

A. These records are kept, these sales are kept under the name of the party to whom sold. [279]

Q. And how long are they retained?

A. We retain those records for several years.

Q. And will you look at each of the documents separately, now, and see if your testimony, as you have identified the first one, relates to, for example, 41-A. A. 41—

Q. This is 41. Now looking at 41-A for identification, does it relate to 41-A? I mean is that the same type of document?

A. Yes, it relates identically to each document.

Q. All right, now, 41-B?

A. 41-B is related to 41 and 41-A in the same manner.

Q. The same document?

A. Same type of document, yes.

Q. And 41-C? A. And 41-C the same.

Q. And 41-D?

A. 41-D is different. 41-D is an invoice.

Q. Will you explain to the jury how that differs from the Sales Memorandum?

A. It differs from the Sales Memorandum in this respect. These documents were transmitted to a canner on the coast for whose account we sold on a commission basis. This document is an invoice from

(Testimony of Jack J. Ehlinger.)

Grant-Whitman Company on merchandise that we ourselves sold. [280]

Q. And do you recognize this document?

A. Yes, sir, I do.

Q. How are those kept in your company?

A. They are kept in the same manner.

Q. I notice this is a copy. Where would the original of that be?

A. The original would be in the hands of Mr. Hoffman.

Mr. Eubank: I ask that Government's Exhibits 41, and 41-A through 41-D be admitted.

Mr. Whitney: May I ask a question on voir dire?

The Court: All right.

Q. (By Mr. Whitney): Referring to Government's Exhibit 41, Mr. Ehlinger? A. Yes, sir.

The invoices under date of 6/15/54?

A. Right.

Q. Was in relation to the so-called phone call you had, is that right? A. That is right.

Q. And that is the phone call you had on June 14th?

A. It is actually, you will notice June 15th, the phone on June 15th resulted in this particular transaction, that is correct.

Q. But the other transactions were no relation to the first phone call? [281]

A. They were subsequent transactions.

Q. Subsequent transactions? A. Yes.

Mr. Whitney: I object, if the Court pleases, to

(Testimony of Jack J. Ehlinger.)

anything except Invoice No. 101, dated June 15th, 1954, on the grounds that the others are not properly identified, and have nothing to do with the charge in the Indictment.

The Court: Objection overruled.

The Clerk: Government's Exhibits 41, and 41-A through 41-D, in evidence.

(Said Sales Memos were received in evidence and marked as Government's Exhibits 41, 41-A through 41-D.)

The Court: We will have our morning recess at this time.

(The morning recess was had.)

The Court: You may continue.

Q. (By Mr. Eubank): I show you Government's Exhibits 41, and 41-A through 41D, and also Government's Exhibit in evidence 39, and ask you as far as your Sales Memos are concerned, can you relate the sales memos to phone calls received from Mr. Hoffman?

A. Yes. You will notice that we show in a box how the order originated. It would either be by letter, by wire, or *here* Hoffman by phone.

Q. That is Exhibit in evidence 41, and that was by phone. [282] And referring, then, to Government's Exhibit 39 in evidence?

A. Well, you will notice here that when we completed this memo for transmission to the shipper, we date it on the day that that order was written up, which is June 15th.

So our memo is dated June 15th, and is cor-

(Testimony of Jack J. Ehlinger.)

responding to this Phoenix call of the same date.

Q. And it would be your testimony it was that phone call that related to——

A. That pertained to this business, yes.

Q. Now, Exhibit 41-A?

A. That date was on June 18th. And here we are, Phoenix call on June 18th.

Q. And your testimony would be that that phone call relates to this? A. To this 41-A.

Q. 41-A in evidence? A. Correct.

Q. And 41-B in evidence?

A. 41-B is dated 6-21.

Q. And that would relate to——

A. Would relate to phone call from Phoenix on the 16th.

Mr. Whitney: Pardon me. I didn't hear that last.

The Witness: Would relate to this phone call on June 21st.

Q. (By Mr. Eubank): In regard to 41-C, Government's Exhibit in evidence? [283]

A. 41-C, June the 26th. And referring to phone call—usually we date those the same day. Sometimes if we are busy, we make a note, and then write them up subsequently.

Mr. Whitney: Speak up, sir.

The Witness: I said, usually we date those on the day the order comes in.

Q. (By Mr. Eubank): And on the one of June 26th?

A. On June 26th, I don't find June 26th at the moment here.

(Testimony of Jack J. Ehlinger.)

Q. Okay. Then on the order of, say, Government's Exhibit 41-D?

A. On June 24th, our invoice was dated on June 24th, now.

Q. Can you relate that with one of the telephone calls in Government's Exhibit in evidence, is it 39?

A. 39. Here is the Phoenix call on June 23rd.

Q. Would it be your testimony that that call relates to this?

A. I would say yes, because we rendered the invoice the following day.

Q. All right. Now, going to the first, or the second call of Mr. Hoffman, well, the first call, did he state anything about his business character?

A. Yes, he did. He represented himself as being in the wholesale grocery business. [284]

Q. And did he make any other representations as to business in the first call, that you recall?

A. He referred to several firms as having done business with them, who we knew.

Q. And do you recall either of those firms he referred to?

A. I recall one in particular, because they are close friends of mine, and that is Soule-Gibbs, in San Francisco.

Q. And did you inquire as to his credit rating, or any item like that?

A. We did not.

Mr. Whitney: At what time was this, now?

The Witness: Pardon me?

Mr. Whitney: What time are we talking about?

(Testimony of Jack J. Ehlinger.)

Mr. Eubank: This is the first call.

The Witness: This is approximately June 14th.

Q. (By Mr. Eubank): Now, after you had notified Mr. Gavin, and received the information back as to what the price of these items would be, and you read the telegram to the jury. **A.** Yes.

Q. What were the payment terms?

A. That was discussed on the phone, and it was likewise discussed in letter form.

Q. And which telephone call was that?

A. Immediately on the first call we discussed terms. [285]

Q. All right, what were the terms?

A. The terms of the salmon industry are draft terms.

Q. Draft?

A. That means that the documents are transmitted to the buyer's bank. Because of the time in transit on the merchandise, the buyer is allowed normally up to ten days to pick that draft up at the bank.

Q. Now, what does the draft entail, what is a bank draft?

A. A bank draft is simply a document to which is attached the original invoice of the shipper, bills of lading and pertinent papers referring to the sale, and transmitted to the buyer's bank.

Q. Now, are you familiar with the use of that type of document with railroading?

A. Very much so.

Q. Now, when you forwarded the original draft

(Testimony of Jack J. Ehlinger.)

and the original bill of lading on a railroad shipment, what usually is the effect?

A. The effect usually is that the customer must lift those documents prior to the time he gets receipt of merchandise.

Q. And by lifting the documents, what do you mean by that?

A. Picking up his draft. He has to pay for that merchandise, and then he will take his original documents down to the freight company, who will release the merchandise. There [286] is a distinction there.

Q. All right, I will ask the questions.

Now, when things are motor trucked, particularly on the West Coast, is there a different procedure?

A. The procedure is quite similar, other than the fact that the customer can receive merchandise prior to having picked up the draft at the bank.

The reason for that is because of the elapsed time, and your general trucking program and policy procedure, unless the shipper would ship on what is known as an Order Bill.

Q. Now, for example, if the original bill of lading and the original draft were at a bank, we will say, in Tempe or Mesa, and this canned goods was trucked down here. A. That is correct.

Q. Is it possible to get the canned goods without picking up or lifting the bill of lading?

A. It is possible unless the truckers are instructed to hold the merchandise until the customer had brought in the original papers.

(Testimony of Jack J. Ehlinger.)

Q. Now, you have testified as to the terms, and it was ten days? A. Ten days, yes.

Q. What does that mean?

A. That means that within ten days the customer comes to the bank with his check, and the bank releases the documents [287] to him. The bank then transmits that money to the shipper's bank in the northwest.

Q. Do you know of your own knowledge whether this money, in regard to the shipments identified here, was ever received?

A. I know definitely there was never any payment made.

Q. And have you ever received any commission for soliciting the business?

A. No, we haven't.

Q. Now, in regard to the second telephone call, the second collect telephone call from Ben Hoffman, or person by the name of Ben Hoffman, were any of the terms rediscussed at that time?

A. They were not only rediscussed, but we submitted in letter form outlining quite emphatically what the terms of sale were.

Q. Do you have a copy of that letter?

A. Yes, I believe I have.

Oh, here we are.

Q. You don't have the letter. In regards to the terms, your testimony is that you did discuss the terms?

A. We discussed the terms. In fact, we discussed the terms on each call.

(Testimony of Jack J. Ehlinger.)

Q. How did it?

A. The business that was accepted by Mr. Hoffman, everything being equal, was interesting to our shipper. We were interested in making the sale. When we felt that Mr. Hoffman would lift the first draft, the shipments came close together, a matter of a few days, the shipper concluded to ship the second lot. I don't believe he would have shipped the second lot had we not had that information from Mr. Hoffman.

Q. All right. Now, after the second phone call and the other phone calls, was there any discussion as to changes in terms?

A. No, there never was.

Q. What was the main character of the phone call? What was the phone call for?

A. The phone call was simply a means for the buyer, which in this case was Mr. Hoffman, to transmit his order for the merchandise.

Q. And at each of those calls, there was a new or a different order of merchandise?

A. A different order of merchandise, yes.

Q. And these documents contained in Government's Exhibits [291] 41, and 41-A through 41-D?

A. Represent the merchandise.

Q. Represent the merchandise ordered?

A. Represent the merchandise ordered.

Q. Would you read quickly from 41 through 41-D, the type of merchandise, and the quantity that was ordered?

(Testimony of Jack J. Ehlinger.)

A. These documents all represent canned fish products.

On this first document, No. 41, 150 cases of red salmon.

On document No. 41-A, 100 cases of red salmon, and 50 cases of medium red salmon. Two varieties.

41-B represents 300 cases of tuna.

41-C represents 200 cases of red salmon, and 100 cases of crabmeat. Invoice No. 106 represents 80 cases of salmon.

Q. And those are the amounts and quantities shipped through your brokerage?

A. That is correct.

Q. Now, as a result of these shipments, when was the first time that you had discovered that all was not as had been represented?

Mr. Whitney: Wait a minute, if the Court please. I object to that.

The Court: Yes, I don't know what you mean.

Mr. Eubank: I will withdraw the question. [292]

Q. (By Mr. Eubank): In relation to these orders, did you pay a visit to Phoenix, Arizona?

A. Shortly after the last shipment was transmitted——

Q. Answer yes or no. A. Yes.

Q. And why did you visit Phoenix?

A. I came to Phoenix because——

Mr. Whitney: If the Court pleases, I object to it as immaterial.

The Court: We will see whether it is or not. Go ahead.

(Testimony of Jack J. Ehlinger.)

The Witness: I came to Phoenix because when none of the drafts had been lifted from the bank, myself and Mr. Gavin began to investigate the situation, and called several people whom we knew quite well, and who immediately told us that we had better——

Mr. La Prade: We object to it as hearsay.

The Court: Yes, don't tell anything that was told you.

Q. (By Mr. Eubank): Now, what was the date of this trip to Phoenix?

A. I arrived in Phoenix on July 10th.

Q. And what was the first thing you did in relation to Ben Hoffman?

A. The first thing I did was to endeavor to meet one of my buyers, but I was unable to locate Mr. Hoffman.

Q. Did you in that process go to a shipping line here in [293] Phoenix?

A. That was my second call. I went to the shipping line to find out.

Q. What was the name of the shipping line?

A. American Consolidators.

Q. How did you know of the American Consolidators?

A. Because the merchandise was consigned to them in Los Angeles for trucking into Phoenix. They are a well-known freight forwarding line.

Q. And did you, while you were down here, go to the offices of Acme Distributing Company?

A. Yes, I did.

(Testimony of Jack J. Ehlinger.)

Q. And was that in Tempe or Mesa?

A. That was in Tempe.

Q. Do you recall approximately the location?

A. Yes, it was on Apache Boulevard.

Q. Now, did you go up to the office?

A. Yes.

Q. Was anyone present?

A. There was a young lady present in the office.

Q. And as to the conversation there——

Mr. Whitney: Wait a minute. Who was the conversation with at the time, and who was present?

The Witness: In the office?

Mr. Whitney: Yes. [294]

The Witness: When I came into the office, this young lady was present, and I asked whether Mr. Hoffman were in or whether he would be back.

Q. (By Mr. Eubank): And what was her reply to that?

A. She said he was not in, and she did not know when he would return.

Q. And is that the only time that you were in this particular office, or did you make other trips there? A. I made one other trip.

Mr. Whitney: Pardon me?

The Witness: I made one further trip there, and the office at that time was closed.

Q. (By Mr. Eubank): When you were in the office, would you explain to the jury the type of office it was, I mean, the furniture in it.

A. It is rather difficult, because it was very bare.

(Testimony of Jack J. Ehlinger.)

There was a desk in there. I don't recall that there was even a phone.

Q. Was there a typewriter?

A. I don't recall specifically.

Q. Was there any filing cabinets?

A. Not to my recollection.

Q. Your testimony would be that it was, except for the few pieces of furniture, it was a fairly bare office, is that [295] correct? A. Correct.

Q. Now, Mr. Ehlinger, were you successful in locating any of the products that you had shipped?

A. I was successful in locating the major portion of it.

Q. And where, or at what places did you locate those products?

A. Must I answer the specific destination of them, you mean?

Q. Well, where did you find your products?

A. Well, I found the products at two super markets, primarily.

Q. What were the names of the markets?

Mr. Whitney: I object to that as immaterial.

The Court: I don't know. We will have to find out about this.

The Witness: One was I believe known as Safeway Stores, Russ Keeton, and the other was Nebs Market, who I subsequently learned was likewise a Mr. Keeton.

Q. (By Mr. Eubank): In those stores, do you recall the types of your merchandise that was on display?

(Testimony of Jack J. Ehlinger.)

A. Yes, I do. There was Red Salmon on display, and advertised at a specific price. [296]

Q. Now, what was the retail selling price of the salmon that was displayed?

A. In Phoenix, it varied. 59c. 59, as I recall.

Q. Let us go to Russ Keeton, Safeway Market, what was it on sale for? A. 59c.

Q. Now, let us go to the Nebs Market.

A. Both of those markets advertised.

Q. At what price? A. At 59c.

Q. At 59c? A. Yes.

The Court: 59c for what?

The Witness: Per one pound can.

Q. (By Mr. Eubank): Now, could you look at Government's Exhibits 41, 41-A through 41-D, and tell the types of salmon that you saw on display?

A. Yes, I could do that. I could tell you the type that was being displayed.

Q. When you say the type of salmon, you mean the brand?

A. The type of salmon, Red Salmon.

Q. In the brand name of Gavin?

A. Gavin Brothers, yes.

Q. Would you do that, please? [297]

A. Well, on our No. 1 here, it is all Red Salmon.

Q. Was that on display?

A. This Red Salmon was on display.

Q. At which markets?

A. At Russ Keeton's Market.

Q. Okay. Now, let us go to the next one, that is 41-A.

(Testimony of Jack J. Ehlinger.)

A. 41-A. I did not see this brand on display.

Q. What brand is that?

A. That is Medium Red Salmon.

Mr. Whitney: And what is the other one?

The Witness: The other is Red. I did see that on display.

Q. (By Mr. Eubank): Where did you see it on display? A. Likewise at Russ Keeton's.

Q. All right, 41-B.

A. I saw this merchandise on display at Nebs Market. This represents tuna.

Q. Which one in particular. Would you read both of those?

A. Both. One is what is known as a Light Meat. The other is White, or Albacore.

Q. That is in relation to Exhibit 41-B?

A. 41-B.

Q. And that was on display at Nebs Market?

A. At Nebs Market, yes. [298]

Q. Now, in regard to 41-C?

A. In regard to 41-C, this is the same Red Salmon again. There were several shipments of the same salmon.

Q. That was on display at what market?

A. Russ Keeton's Market.

Q. Now, 41-D?

A. 41-D, I did not see on display. That was the shipment we sent down. However, I have the destination.

Q. Now, at both Russ Keeton's Super, or Safe-way Stores, and Nebs Market, those items were,

(Testimony of Jack J. Ehlinger.)

although Tuna was in Nebs, and Salmon in Russ Keeton's, they were both at what price? Fifty something?

A. I don't recall without checking the ad at what price the Tuna was being sold. I do recall specifically, because we have the ads on the Salmon, that the merchandise was being sold to the consumer at 59c.

Q. Now, on the Tuna fish, do you have a copy of the ad with you? A. No, I don't.

Q. Did you make a memorandum or note of that?

A. Pardon me?

Q. Did you make a memo or a note?

A. I made a memo of it, yes.

Q. Did you make a memo when——

A. When I was in the market. [299]

Q. When you were in the market?

A. Yes.

Q. May I have that?

A. Oh, you mean do I have the memo with me?

Q. Yes.

A. No, it is attached to our ads. I didn't bring the complete file on that. I don't have that.

Q. Do you recall at what price the tuna was advertised for?

A. As I recall, and I will not state this as a matter of fact——

Mr. La Prade: I object to it, then, your Honor.

The Court: Yes, if you don't know.

Q. (By Mr. Eubank): Do you recall if there

(Testimony of Jack J. Ehlinger.)

was an ad run in the paper by Nebs Market in regard to this Tuna?

Mr. Whitney: I object to this as immaterial.

The Court: He may answer.

The Witness: No, I do not recall that.

Q. (By Mr. Eubank): You do not recall. Now, in regard to the types of salmon that was shipped into this area, are you familiar with the northern or northwest price market for this type of fish?

A. Yes, I am. [300]

Q. Again referring to Government's Exhibit 41, would you tell us what the wholesale price in the northwest is for these types of salmon in 1954.

A. In 1954, the cost to the wholesale grocer, or national chain on this variety of salmon was \$27.50 a case.

Q. What variety of salmon?

A. That, of course, is exclusive of freight. That is at the shipping point.

Q. Is it possible to tell the relation of that number to the poundage?

A. Yes, the salmon is packed 48 one-pound cans to the case.

Q. So what you do is divide the 48 by this number?

A. By this number, plus freight.

Q. Plus freight.

A. So there would be approximately, in this market, approximately \$2.00 a case additional.

Q. Now, that is in regard to Bristol Bay Red Salmon. Does each of the fish, or the fish listed on

(Testimony of Jack J. Ehlinger.)

these sales memos, can the price per pound be determined in that manner?

A. It can very easily be determined, yes.

Q. Now, as far as the northwest market is concerned, did these prices represent the figure at that time, as far as you know?

A. They did, yes. [301]

Q. And did you make other sales of salmon and fish products at this time?

A. Yes, we did, at those prices.

Q. Are these prices the same or similar to those?

A. Similar to those prices, yes.

Q. Now, when you arrived in Phoenix and began looking for the different merchandise, would you relate to the jury where you found—other than Keeton's, both Keeton's markets, where you found other merchandise that had been shipped?

Mr. Whitney: I object as immaterial.

The Court: You may answer.

The Witness: May I answer that?

Mr. Eubank: Yes.

The Witness: I have a record—I, in an endeavor to cooperate with our shipper, covered considerable country from Tucson all through the Valley, and many, many markets. I only located in two markets, and a very negligible quantity of salmon. One was Wright's Market.

Q. (By Mr. Eubank): Do you have the address?

(Testimony of Jack J. Ehlinger.)

A. I think I have got the address. It is Justrite Store, on North 7th Street.

Q. What type of fish did he have in there?

A. He had Red Salmon. [302]

Q. And was that Gavin?

A. That was Gavin. But he only had ten cases.

Q. And that is the only other store that you located?

A. And I don't have the address here, at Roland's Market.

Q. Where was that located, what city?

A. That was located in Phoenix. I don't have their address.

Q. What type of fish did they have?

A. Likewise Red Salmon. And the price that the buyer paid for it. Do you want that price?

Q. The price it was advertised for sale?

A. The price at which the buyer bought it?

Q. No. Now, you have testified as to the trip down here and the initial telephone calls. And you have testified as to the statements made by Mr. Hoffman, the failure to lift the draft.

When you arrived down here, did you visit the bank that that draft was on?

A. No, I did not. That was handled from the northwest.

Q. And you have testified that at no time did you talk to Mr. Hoffman personally when you were down there?

A. That is correct.

Q. When you were at Tucson, did you attempt to drop in at the Hoffman's Wholesale Grocery

(Testimony of Jack J. Ehlinger.)

down there? A. No, I did not. [303]

Q. You were merely looking for other merchandise? A. Correct.

Mr. Eubank: No further questions.

Cross-Examination

By Mr. Whitney:

Q. Mr. Ehlinger, these canned goods were sold on credit?

A. I would say you could interpret it as such.

Q. Sir? A. I would say yes.

Q. And Mr. Hoffman didn't pay?

A. Correct.

Q. Nor the Acme Distributing Company didn't pay you? A. Correct.

Q. You filed a suit in this court on the 13th of April, 1955, to collect what was due you; is that correct? A. I don't recall it.

Q. You recall that a suit was filed?

A. I was in Phoenix.

Q. Pardon?

A. I was in Phoenix as a witness before the Grand Jury.

Q. You authorized one to be filed? I am talking about a civil suit.

A. You are talking about a civil suit?

Q. That is right.

A. To the best of my knowledge, no civil suit has been filed. [304]

Q. Did you authorize a suit filed in this court

(Testimony of Jack J. Ehlinger.)

numbered Civil-2208, Phoenix, entitled Gavin Brothers, Inc., a Washington Corporation, and Grant-Whitman Company, a Washington Corporation, against Mr. Hoffman and two other people?

A. There is a suit in preparation.

Q. Yes?

A. Of course, I don't know the legal technicality, as to whether it is filed or not.

Q. Your corporation filed that, you authorized that?

A. We authorized preparation of a suit; yes.

Q. And in that suit you are suing Mr. Hoffman for \$1,511.89?

A. Correct. Our company; yes.

Q. That suit, according to the date, however, was filed April 13, 1955. That suit was filed for the purpose of collecting that money that was due you?

A. That was the objective; yes.

Q. And Gavin? A. Correct.

Q. Who had sold Mr. Hoffman on credit?

A. Yes.

The Court: What was the 1500, your commission?

The Witness: No; that was merchandise we shipped ourselves.

Q. (By Mr. Whitney): As I understand, on your direct examination you stated [305] that you had never met Mr. Hoffman.

A. That is correct.

Q. Did you ever talk to Mr. Hoffman?

A. By phone; yes.

(Testimony of Jack J. Ehlinger.)

Q. I mean, personally, you never talked to him?

A. Personally; no.

Q. You talked to a man that said he was Mr. Hoffman?

A. By phone, right. Right.

Q. Now, what connection, if any, have you with Gavin Brothers?

A. We are the agent for Gavin Brothers.

Q. You are the agents for Gavin Brothers?

A. Correct.

Q. In other words, if I were to call you up and ask you to send me ten cases of salmon, you would transfer that order right to Gavin Brothers?

A. Correct.

Q. When was this sale made by you amounting to \$1,511.89? When was that made, do you remember?

A. Yes; I can tell you exactly. That was made on June 24th.

Q. Pardon?

A. June 24th.

Q. What date?

A. June 24th. [306]

Q. That was not the result of this first phone call you testified to?

A. No; it was not.

Q. But a subsequent one?

A. Subsequent.

Q. Why wasn't that order sent to your principal, Gavin Brothers?

A. Because this salmon was in Spokane, Washington, and it is not unusual in marketing practice to locate merchandise and to transmit it to any given buyer.

Q. You kept trying to sell Mr. Hoffman as late as July, further goods?

(Testimony of Jack J. Ehlinger.)

A. I don't believe you are correct.

Q. Pardon me?

A. I don't believe you are correct in that statement. The last date—no; you were right, July 8th was the last invoice from Gavin?

Q. And that was on credit, also?

A. That was on terms that were agreed upon between the parties.

Mr. Whitney: That is all, Mr. Ehlinger. Thank you.

Redirect Examination

By Mr. Eubank:

Q. Mr. Ehlinger, are you familiar with the full name of the suit that Mr. Whitney referred [307] to?

May I see that?

Mr. Whitney: You can look at the file.

Q. (By Mr. Eubank): Are you familiar with the full name of the suit that Mr. Whitney was referring to?

A. Our attorneys have the documents.

The Court: Did you ever see any of these? You don't know anything about this lawsuit, do you?

A. On these documents?

The Court: Yes.

The Witness: Very little.

The Court: Well, why waste time on that.

Mr. Eubank: Could I refresh his recollection?

The Court: There is nothing to refresh. The

lawyers drew the papers. These clients don't know anything about what their lawyers do.

Mr. Eubank: No further questions, Mr. Ehlinger.

The Court: Is that all?

Mr. Whitney: That is all.

(Witness excused.)

The Court: It is almost twelve. We will suspend until two o'clock. Keep in mind the Court's admonition.

(The noon recess was taken.) [308]

The Court: Call your next witness.

Mr. Eubank: Douglas Wassom.

DOUGLAS WASSOM

called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Douglas Wassom, W-a-s-s-o-m?

A. Right.

Q. And you are with the First National Bank?

A. Yes, sir.

Q. At the branch office in Tempe, Arizona?

A. Right.

Q. What is your capacity with the bank?

A. Assistant Cashier.

Q. You are here under a subpoena duces tecum?

A. Right?

(Testimony of Douglas Wassom.)

Q. And we asked you to bring certain bank records with you. [309] Do you have them?

A. Yes; I do.

Mr. Eubank: I ask that this exhibit be marked as Government's Exhibit 42 for identification.

(Said Receipt for Drafts was marked as Government's Exhibit 42 for identification.)

Q. (By Mr. Eubank): I show you Government's Exhibit 42 for identification, and ask you if you recognize the document? A. Yes; I do.

Q. Will you tell the jury what this document is?

A. This is a record of Incoming Drafts which we received on two different dates, July 14, 1954, and July 15, 1954, from the Security First National Bank of Los Angeles.

Q. And this particular form, is that your company form? A. Right.

Q. And is this the only record that you keep of this type of transaction in your records?

A. This is the only one we keep of these.

Q. And from this particular type of record, what information is kept on it?

A. The information is kept as to who we received the draft from, who it was drawn to, and the amount of it, the date we received it, the collection number of the bank from which it was received, and the instructions as to what disposition was to [310] be made of it by us.

Q. Will that statement show whether monies were paid or not? A. Yes; it will.

(Testimony of Douglas Wassom.)

Mr. Eubank: I offer Government's Exhibit 42 in evidence.

Mr. Whitney: I have a question on voir dire.

Q. (By Mr. Whitney): When was this made up, sir?

A. At the time that it was received, July, 14th, 1954.

Mr. Whitney: No particular objection to it, your Honor. It is cumulative.

The Court: All right, it may be received.

The Clerk: Government's Exhibit 42 in evidence.

(Said Receipt for Draft's was received in evidence and marked as Government's Exhibit 42.)

Q. (By Mr. Eubank): Now with reference to Government's Exhibit 42 in evidence, will you relate to the jury the first draft on that page, and who was the draft drawn to, or drawn on?

A. Drawn on the Acme Distributing Company, 818 Apache Boulevard.

Q. And what was the amount of the draft?

A. The amount of one draft was \$8,289.99.

Q. And the date of that particular draft?

A. The date that we received it was July 15, 1954. [311]

Q. And was that draft paid or not paid?

A. According to the record, it says that no attention paid to notice. Was returned on September 9th, 1954.

(Testimony of Douglas Wassom.)

Q. Now, in regard to the second draft on this page. A. It was dated July 14, 1954.

Q. And who was the payor?

A. Acme Distributing Company, 818 Apache Boulevard, Tempe, Arizona.

Q. And what was the date of this particular draft? A. We received it July 14, 1954.

Q. And the amount? A. \$6,824.58.

Q. And can you tell if this one was paid or not paid?

A. It says that No Attention Paid to Notice, returned July 9, 1954.

Q. Now, the third and last draft on the page, who is the payor?

A. Acme Distributing Company, 818 Apache Boulevard, Tempe, Arizona.

Q. And the date received?

A. July 14, 1954.

Q. And the amount? A. \$4,123.45.

Q. And the disposition?

A. No attention Paid to Notice, Returned September 9, 1954. [312]

Mr. Eubank: No further questions.

Cross-Examination

By Mr. Whitney:

Q. Mr. Wassom, your handwriting on there, was that put on the date that it is purported to have been there? A. Correct.

Q. And this first draft that you received was

(Testimony of Douglas Wassom.)

July 15th, 1954? A. Right.

Q. That is right. The second draft mentioned here is July 14, 1954? A. Right.

Q. Both from the head office of the Security First National Bank in Los Angeles?

A. Right.

Q. And the drafts were on the Acme Distributing Company? A. Right.

Q. And were not paid? A. That is right.

Q. And then the third one on here is also on June 14, 1954? A. Right.

Q. That was also not paid? A. Right.

Q. Is that correct? A. Yes. [313]

Q. How long have you been in the banking business?

A. I have been with the bank about eight months.

Q. Eight months? A. Right.

Q. You weren't there, were you, when this was made up? A. No, sir.

Q. Of course, you haven't been there long enough, maybe, to testify to this, but I might ask you, have you ever had any draft, or, if you know of any draft from other people, to other people that have come into your bank that have not been paid?

A. Yes, sir.

Mr. Whitney: That will be all.

Mr. Eubank: No further questions.

The Court: That will be all.

(Witness excused.)

OLIVER R. WELLS

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is R. W. Wells?

A. Oliver R. Wells.

Q. Oliver R. Wells. Pardon me. You were sworn
earlier in this court? [314]

A. That is right.

Q. You are the manager of American Consolidators?

A. Yes.

Q. Here in Phoenix, Arizona?

A. Yes.

Q. At 1133 W. Hilton Avenue?

A. That is right.

Q. Mr. Wells, do you know the name of Ben Hoffman?

A. Yes; I do.

Q. Do you know the name of Acme Distributing Company?

A. Yes, I do.

Q. Have you ever seen Mr. Hoffman before?

A. Yes, I have.

Q. Do you see him in this room?

A. Yes.

Q. Will you point him out to the jury?

A. That is Mr. Hoffman back there (indicating).

Q. At the second table there?

A. Yes.

Q. You are here as a result of a subpoena duces tecum, are you not, and asked to bring certain records of your company?

A. Yes.

Q. And did you bring those records with you?

A. Yes, I did.

(Testimony of Oliver R. Wells.)

Mr. Eubank: May these be marked for identification, please. [315]

The Clerk: Government's Exhibits 43, and 43-A through C, for identification.

(Said Freight Bills were marked as Government's Exhibits 43, and 43-A, B, and C for identification.)

Q. (By Mr. Eubank): I show you Government's Exhibits for identification 43, 43-A, B, and C, and ask you if you recognize these documents?

A. Yes, I do.

Q. How do you recognize them?

A. They are American Consolidators freight bills.

Q. Are those the ones you brought with you?

A. That is right.

Q. These freight bills, will you describe how they are kept in the records of your company?

A. Well, they are kept by a freight bill number that is up here at the top right-hand corner, and also by a reference number that is right below the term reference on the freight bill, and they are kept in the files of our company in Los Angeles.

Q. And how long are they kept?

A. They are kept for seven years.

Q. Is there any particular reason for that?

A. The Interstate Commerce Commission regulations.

Q. You have identified 43. Now, will you look at 43-A? [316]

A. Yes.

(Testimony of Oliver R. Wells.)

Q. And see if your same statement goes to that?

A. The same statement goes to this one.

Q. And 43-B?

A. And to 43-B, that is right.

Q. And to 43-C? A. That is correct.

Q. And all four of those documents are the documents of your company? A. That is right.

Q. Now, you say that these are filed in Los Angeles. Can you tell me how you came by them?

A. Yes, I called my Los Angeles office when I received the subpoena, and referred to those particular documents, and I called my Los Angeles office and asked them to dig them up and send them to me.

Q. And when did you receive the documents?

A. I received those Wednesday morning.

Q. And they are these same documents?

A. They are the same documents.

Mr. Eubank: I ask that Government's Exhibits 43 and 43-A, B, and C, for identification, be admitted in evidence.

Mr. La Prade: If the Court please, we object to the introduction of these documents on the ground that this witness is not the custodian of them. He has no personal knowledge of the [317] entries made on them, and they should be properly authenticated by a person who has custody in the Los Angeles office.

The Court: Did you ever have those documents in your possession?

The Witness: Did I ever have, sir?

(Testimony of Oliver R. Wells.)

The Court: Yes.

The Witness: Yes, I did.

The Court: You sent them back to Los Angeles?

The Witness: I sent them back to Los Angeles.

The Court: All right, they may be received.

The Clerk: Government's Exhibits 43, and 43-A to C, inclusive, in evidence.

(Said Freight Bills were received in evidence and marked as Government's Exhibits 43, 43-A, B, and C.)

Q. (By Mr. Eubank): Now, referring to Government's Exhibits 43 and 43-A in evidence, will you please, in regard to 43, tell us the company that the shipment was handled from?

A. The shipment was handled from our—our shipper was the Can-Go Shippers, Inc., of Seattle, Washington.

Q. Do you know who Can-Go Shippers are?

A. Yes, I do.

Q. Will you tell the jury who Can-Go Shippers are?

A. Can-Go Shippers is an association of canned goods packers in the northwest area who have consolidated together [318] in order to get the volume rate on larger shipments.

Q. So the actual name of Can-Go doesn't actually represent the name of the person that might own the products shipped?

(Testimony of Oliver R. Wells.)

A. No, Can-Go is the name of the association of all the shippers.

Q. From this title here, is it possible to refer back to a statement to find out who the name of the original shipper is? A. It would be, yes.

Q. From these numbers?

A. Yes. With further documents.

Q. Now, in regard to this particular shipment, who was the shipment made to, and the date?

A. The shipment was made to the Acme Distributing Company.

Q. And the date of that?

A. And the date the shipment was made is June 22nd, in Los Angeles. We received it in Los Angeles June 22nd, and the shipment was received here on June 23rd.

Q. Now, in regard to Government's Exhibit in evidence 43-A, would you please tell who the shipper of that was?

A. Can-Go Shippers Association.

Q. And to whom?

A. To Acme Distributing Company.

Q. Now, on this particular item, what was the shipping date?

A. The shipping date in Los Angeles, we received it [319] June 25th, 1954.

Q. And your delivery date?

A. And our delivery date in Phoenix was June 26th, 1954.

Q. Now, in regard to Exhibit 43-B, who was the shipper of that?

(Testimony of Oliver R. Wells.)

A. Can-Go Shippers Association.

Q. To whom?

A. Acme Distributing Company, June 29th, 1954, received here June 30th, 1954.

Q. Now the last one?

A. Can-Go Shippers Association.

Q. Exhibit 43-C, isn't it?

A. Yes. Acme Distributing Company.

Q. Is the consignee?

A. Is the consignee. July 2nd is the shipping date, and it was received July 3, 1954.

Q. Now, on any of these documents that you hold in your possession, did Mr. Hoffman appear personally at the dock and take a delivery?

A. Yes, he did.

Q. And at that time, did you require him to sign and initial in your presence?

A. Well, it was not in my presence. The manager of the company, I was the manager of the company.

Q. And he did not sign in your presence. [320]

A. No.

Mr. Whitney: I object to that as hearsay.

Mr. Eubank: I am just asking if he signed in his presence. Did he sign in your presence?

The Witness: He did not sign in my presence.

Q. (By Mr. Eubank): There is only one other item I would like to get from you, Mr. Wells, that in referring again to 43, I don't believe we have the type of shipment, or the description of these. Would you, as I call the number, describe the goods that

(Testimony of Oliver R. Wells.)

were delivered? A. Yes.

Q. Exhibit 43?

A. Exhibit 43 was a shipment of canned fish.

Q. How many cans? A. 150 cases.

Q. And 43-A?

A. Was a shipment of 200 cases of canned fish.

Q. And 43-B?

A. Was a shipment of 300 cases of canned fish.

Q. And 43-C?

A. Was a shipment of 200 cases of canned fish and 100 cases of crab.

Q. Did you talk, at any time, to Mr. Hoffman about these [321] particular shipments?

A. Yes, I did.

Q. What did Mr. Hoffman say to you?

A. Mr. Hoffman came into my office at the time we received the first of this series of shipments and asked that since the freight bill read Tempe, that it be diverted to him in Phoenix, and he also asked that we deliver to more than one place. And I had to tell Mr. Hoffman that we couldn't legally do that. And then Mr. Hoffman asked if we would make one delivery in Phoenix, and I told him we could do that, after which he told me where to take the shipment, and I gave the instructions to my men.

Q. Do you recall which particular shipment that was? A. Yes.

Q. Could you identify it from these records?

A. Yes, I could. I have it. It is number 43.

Q. Exhibit 43 is the shipment that he directed

(Testimony of Oliver R. Wells.)

you to deliver to a certain spot? A. Yes.

Q. Do you recall the spot you were to deliver the shipment to? A. Yes, I do.

Q. What was the spot?

A. It was Keeton's Market on West Van Buren.

Q. Who was it delivered to, or do you [322] know? A. My drivers reported——

Q. That is all right. You don't know. In regard to these particular shipments, do you recall at all the brand names of the goods that were shipped?

A. No; I do not.

Q. If you looked at these bills or these documents, could you then tell?

A. No, sir. On our freight bills the name didn't appear. All those were canned fish.

Mr. Eubank: I have no further questions.

Cross-Examination

By Mr. Whitney:

Q. Mr. Witness, if a shipment was coming over your lines to me here in Phoenix, and I would authorize you to send that shipment to Mesa, you would do it, wouldn't you?

A. Yes, sir. At a further charge.

Q. That is in the ordinary course of your business? A. In the ordinary course, yes, sir.

Mr. Whitney: That is right. That is all.

Mr. Eubank: No further questions.

The Court: That will be all.

(Witness excused.)

HAROLD LEIDY

called as a witness in behalf of the Government, having been first duly sworn, testified as [323] follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Harold Leidy?

A. That is right.

Q. And you are presently employed with Busy Bee Transportation & Warehouse?

A. That is right.

Q. And what is your capacity there?

A. Foreman.

Q. And that location is at 601 West Jackson, Phoenix, Arizona?

A. That is right.

Q. Mr. Leidy, you were formerly employed by Mr. Oliver R. Wells, American Consolidators, is that not correct?

A. That is right.

Q. And you were so employed in June and July of 1954?

A. That is right.

Q. Now, Mr. Leidy, do you recognize the name of Ben B. Hoffman?

A. Yes; I do.

Q. And the name of Acme Distributing Company of Tempe?

A. Yes.

Q. Do you see Mr. Hoffman in the room?

A. Yes, sir.

Q. Would you point him out to the jury, [324] please?

A. He is the gentleman sitting right behind you there with the brown suit on.

Q. Now, in regard to Mr. Hoffman, and to your

(Testimony of Harold Leidy.)

employment at the American Consolidators, do you recall at any time doing business with Mr. Hoffman on the docks at American? A. Yes, sir.

Q. Now, I show you Government's Exhibits 43, 43-A, B, and C, in evidence, and ask you to examine the documents. A. Yes, sir.

Q. Now, these particular transactions, in these particular transactions, do you recall Mr. Hoffman?

A. Yes, sir.

Q. Now, how do you recognize these particular transactions?

A. Because I was the one that received the money from Mr. Hoffman and signed them paid on three of the shipments.

Q. When you say received the money, what do you mean? A. The freight charges.

Q. The freight charges? A. Yes.

Q. And are those your initials?

A. This is my initial and last name.

Q. And this is the date of delivery?

A. Yes.

Q. That is so on Government's Exhibit 43, Government's Exhibit 43-B, and on Government's Exhibit 43-C? [325]

A. Yes. And this was received at the office.

Q. And 43-A was not received by you?

A. No. Will you explain to us how this money was paid to you? A. It was paid in cash.

Q. Who paid it? A. Mr. Hoffman.

Q. And where did he pay it?

(Testimony of Harold Leidy.)

A. He paid it at the dock, the American Consolidators.

Q. Now, in regard to those particular shipments, did Mr. Hoffman say anything to you about them, in relation to them?

A. No, just to give us the information as to where they were to be delivered, the shipments.

Q. What information did he give you as to the delivery of the shipments?

A. Well, the first shipment was to be delivered to Russ Keeton's Market. The second one was delivered to 44th and Thomas, Nebs Market. The third one I believe he picked up, and the fourth was delivered to 44th and Thomas.

Q. Now, can you tell by looking at those documents which ones he asked to be delivered, and where?

A. Roughly, yes.

Q. All right (handing document to witness.)

A. This one, I believe this is the one that was delivered [326] to Russ Keeton's.

Q. That is Exhibit 43?

A. Yes. And then this one out to 44th and Thomas.

Q. That is Exhibit 43-A. And what market is that?

A. That was Nebs Market at 42nd and Thomas. This here one he picked up.

Q. That is 43-C?

A. Yes. And this one here was also delivered to 44th and Thomas, Nebs Market.

(Testimony of Harold Leidy.)

Q. Now, did you make any of these deliveries yourself? A. No, sir.

Q. They were made by somebody in the company? A. By drivers employed by us.

Q. Was that the only thing that you recall in talking to Mr. Keeton about these transactions?

A. I wasn't in touch with Mr. Keeton at all. All the transaction was with Mr. Hoffman.

Q. Mr. Hoffman?

A. It was all through Mr. Hoffman, yes.

Q. Did Mr. Hoffman sign on those three bills, did he sign those in your presence?

A. No, sir; they were signed at the delivery destination.

Q. And in your particular office, or when you worked for American, those bills went along with the shipment, did they not? [327] A. Yes.

Q. And who then procured the signature?

A. The drivers that made the deliveries.

Q. And was that usually at the—was that at the point of delivery?

A. At the point of delivery.

Q. And at the point of unloading?

A. Yes.

Mr. Eubank: No further questions.

Mr. Whitney: No questions.

The Court: That will be all.

(Witness excused.)

H. N. KEETON

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is H. N. Keeton?

A. That is right, sir.

Q. And that is K-e-e-t-o-n? A. Yes.

Q. Mr. Keeton, you are the proprietor of Nebs
Market? A. My son and I are.

Q. That is at 4336 East Thomas Road?

A. That is right, sir. [328]

Q. At Phoenix, Arizona? A. Right, sir.

Q. Now, Mr. Keeton, do you know Mr. Ben
Hoffman? A. I do.

Q. Do you know the name of Acme Distributing
Company? A. Yes, sir.

Q. Do you see Mr. Hoffman in this room?

A. I do, sir.

Q. Will you point him out to the jury there?

A. That is Mr. Hoffman on the back row back
there.

Q. Now, you are here under a subpoena duces
tecum, is that not correct? A. That is right, sir.

Q. And we asked you to bring certain records of
purchases made by you from Mr. Hoffman?

A. I was asked to do that, Mr. Eubank, but I be-
lieve the records, my cancelled checks and my paid
invoices are in your folder, or in a folder. I don't
have them in my possession, sir.

Q. That is right, Mr. Keeton. And in reply to
the subpoena, you are here this morning?

(Testimony of H. N. Keeton.)

A. Yes.

Mr. Eubank: I ask that these be marked for identification.

The Clerk: Government's Exhibits 44, 45, 46, and 47 for identification.

(Said checks and receipts were marked as Government's Exhibits 44, 45, 46, and 47 for identification.) [329]

Q. (By Mr. Eubank): Mr. Keeton, approximately, do you recall when these purchases of seafood were made by you from Mr. Hoffman?

A. Yes. If I remember correctly, Mr. Eubank, they were made the latter part of June and the first part of July, 1954.

Q. Now, in relation to these purchases, would you please tell the jury the circumstances that Mr. Hoffman approached you to sell seafood products?

A. Well, if my memory serves me correctly, some two or three days before Mr. Hoffman came to see me in person, he called me on the telephone and told me who he was, Mr. Ben Hoffman, with Acme Distributing Company, and told me that, I believe at that time that he had salmon, and I believe tuna, which we bought, tuna and salmon, and I am not sure at the time whether there was a price discussed over the telephone, but when Mr. Hoffman came to see me, why, he told me what he had, and we discussed the price of both, and we later bought it.

I am sure that at that time that he was there. If

(Testimony of H. N. Keeton.)

I remember correctly, we didn't buy it at that time. It seems that he called me later, and after having discussed this with my son, we gave him the order for the salmon, which I believe was first, and later the tuna.

Q. Now, Mr. Keeton, I show you Government's Exhibit 44 for identification, and ask you if you recognize those documents? [330]

A. I do, sir.

Q. First, the check. A. Yes, sir.

Q. And how do you recognize it? Is this your signature? A. That is my signature, sir.

Q. Is that one of your checks?

A. It is, sir.

Q. I ask you to examine the document attached to it and see if you recognize that document?

A. I do, sir.

Q. How do you recognize that document?

A. That was a receipt that Mr. Hoffman gave me at the time of this particular transaction.

Q. And I now show you Government's Exhibit 45 for identification, and ask you if you recognize the top document.

A. I do, sir. This check is ours, a market check drawn on the Bank of Douglas and signed by my son, H. N. Keeton, Jr.

Q. And do you know your son's signature?

A. I do, sir.

Q. And is that it?

A. That is his signature.

(Testimony of H. N. Keeton.)

Q. Examine the next document, and would you tell us what that document is?

A. That is a paid invoice or receipt that Mr. Hoffman gave us for this transaction, which this was tuna. [331]

Q. Now, I show you Government's Exhibits 46 and 47, and ask you to identify those documents.

A. I can identify this first one for \$1,250.00, which again was drawn on Nebs Market, written on the Bank of Douglas, and this is my signature.

Q. That is in regard to 46?

A. That is right. And this one dated July 9th, I recognize as being on our business, Nebs Market, drawn on the Bank of Douglas, made out to Mr. Hoffman, and my son signed it, and I recognize it as being his signature.

Mr. Eubank: Thank you. I would like that these instruments be admitted in evidence.

Mr. Whitney: Objection. They are immaterial to the issues.

The Court: They may be received.

The Clerk: Government's Exhibits 44, 45, 46, and 47 in evidence.

(Said documents were received in evidence and marked as Government's Exhibits 44, 45, 46, and 47.)

Q. (By Mr. Eubank): Now, relating back, Mr. Keeton, to Government's Exhibit 45 in evidence. First, Government's Exhibit 44 in evidence. Would

(Testimony of H. N. Keeton.)

you please state, if you can, what that check is in payment of, if anything?

A. Well, I would have to state that this particular check, [332] Mr. Eubank, would be in payment of Tall Salmon that we bought from Mr. Hoffman.

Q. Now, does the amount that shows on your receipt there, showing a check for \$2,000.00, bear any relation to this particular check?

A. It does, sir. It was in payment, or partial payment of this particular invoice.

Q. Now, as far as the receipt is concerned, would you read to the jury the items purchased, and the amounts paid for them? A. Read just this, sir?

Q. Yes.

A. 70 cases of Tall Salmon, \$2,030.00.

40 cases of Salmon, \$76.00. Which made a total of \$2,790.00. In payment, that is receipt of this check for \$2,000.00. That left a balance of \$790.00.

Q. Now, in regard to Government's Exhibit 45, can you tell what that check was in payment of?

A. Yes. After seeing this invoice, I would say that this check is in partial payment of the 200 cases of Tuna that we bought from Mr. Hoffman.

Q. Now, would you read the receipt there of the purchase?

A. I will, sir. 200 cases of Tuna, \$3100.000. And credit \$1,500.00.

Q. And the balance? [333]

A. And the balance is \$1500.00.

Q. Now, in regard to Government's Exhibits

(Testimony of H. N. Keeton.)

46 and 47 in evidence, do you have any recollection at the moment of what those two checks were in payment of to Hoffman, if anything?

A. Well, they would be in payment, Mr. Eubank, of either the Tuna or the Salmon, the only items that we bought from Mr. Hoffman.

Q. These are the only items you bought from Mr. Hoffman, is that correct?

A. That is correct.

Q. Had you known Mr. Hoffman before this particular transaction, Mr. Keeton?

A. I had not, sir.

Q. Have you had any business dealings with him prior to this time?

A. Prior to this?

Q. That is right.

A. I had not, sir.

Q. And had you had any in a personal manner? Had you ever met Mr. Hoffman before?

A. I had never seen him or met him until this transaction.

Q. Now, for example, one of the items purchased there by you was the Tall Salmon?

A. That is right, sir. [334]

Q. Do you recall at the time of purchase whether this was a particularly good deal for the season, for the market in Phoenix?

A. Well, Mr. Eubank, I want you to believe that in buying in quantities of 100 cases of anything that we felt, after discussing it for some time, that it was a good deal for us. Certainly it was at the time, and is now what we would term an off brand salmon,

(Testimony of H. N. Keeton.)

realizing it couldn't command the price that a well-know brand of salmon could. I give as an example Del Monte or Libby.

Q. For that period, you felt it was a good price for that product, would that be your testimony?

A. I thought that it was a good price, and I felt, undoubtedly felt that it was a good buy for us. It was the reason for our buying in quantities like that.

Q. Now, in referring to the exhibit, Government's Exhibit 45 in evidence, a purchase of 200 cases of Tuna, was your reasoning similar for purchasing the Tuna? A. That was right.

Q. And it was the brand that was not familiar?

A. It was a brand that I would term, and certainly my customers did, that it was an off brand, and it was borne out by the fact that I still have some of that on hand after more than two years.

Q. Okay. Now, in regard to this particular tuna. Do you [335] recall the prices that you marketed and sold that for? A. The Tuna?

Q. Yes.

A. Well, I remember, I believe I am correct in stating this, that it was two different kinds of tuna. One would be a white Albacore Tuna, which would be a better grade than just a white tuna. And if memory serves me correctly, we attempted to sell that 3 cans for 98c, and when it didn't move as fast as we wanted it to move, it has taken up space and money we had tied up in it. it was later reduced

(Testimony of H. N. Keeton.)

lower than the 3 cans for 98c, but I am not positive what that price was.

Q. Now, the other type of tuna, other than the Albacore, do you recall what that sold for?

A. No, I don't. We had the biggest quantities of the tuna, that if I remember correctly, was the tuna that I spoke of a while ago, and we sold quite a bit of it for three cans for 98, but the balance of it I am just not sure.

Of course, in our business, we use a lot of, in other words, leaders or we will say lost leaders, and it was sold for less than that, but I am just not positive what we sold the brand for, sir.

Q. Is there any way by looking at this document to check the amount of money, so that you can testify as to what the actual price, or is this the actual price of this salmon to you? [336] In other words, the \$3,100.00, that is all you paid for the 200 cases, is that correct?

A. That is tuna, I believe, Mr. Eubank.

Q. Tuna?

A. That is right. In other words, everything that is there, Mr. Eubank, any transaction that I had is on those invoices, paid invoices, and my checks. There was no cash involved.

Mr. Eubank: No further questions.

(Testimony of H. N. Keeton.)

Cross-Examination

By Mr. Whitney:

Q. You lots of times, Mr. Keeton, buy in large quantities, if you can buy groceries in large quantities? A. Yes; I do, sir.

Q. In order to have any competition with the chain stores, you have to buy in large quantities?

A. That is essential now, sir.

Q. In order to get the price. And at times do you ever buy what you would call damaged goods, goods like have been in a train wreck?

A. I have for the last ten years, sir.

Q. You get those at a nice price?

A. At a greatly reduced price.

Mr. Eubank: I object to this line of testimony, on relevancy. [337]

The Court: If you want to call this man as a witness, you may do it.

Q. (By Mr. Whitney): I believe you stated this was an off brand of salmon, and that you still have some on hand? A. That is true, sir.

Q. In other words, it is harder to sell an off brand than it is a regular brand like Libby or Del Monte, and the like?

A. That is true, not only with salmon or tuna, but with any other food products.

Q. Now, some of that salmon that was sold to you as Red Salmon, was it Red Salmon?

(Testimony of H. N. Keeton.)

A. It was not.

Q. How do you know that?

A. Well, my customers were first to tell me, and instead of being Red Sockeye Salmon as we had thought it all to be, some of it turned out to be, well, you wouldn't call it a Pink Salmon, but I would call it semi-red salmon.

Q. In other words, it was mislabeled as Red Salmon, when in truth and in fact it was more like Pink Salmon?

A. That is true.

Mr. Whitney: That is all.

Redirect Examination

By Mr. Eubank: [338]

Q. Mr. Keeton, did you report this fact to the Food and Drugs Administration, Federal Food and Drugs Administration?

A. No, I am sure I didn't, Mr. Eubank. Certainly I discussed it with Mr. Hoffman.

Q. You do realize that that agency is there to protect the people against false labelling, do you not?

A. I do, sir.

Mr. Eubank: No further questions.

The Court: That will be all, Mr. Keeton.

(Witness excused.)

The Court: Do you have any more witnesses?

Mr. Eubank: Just one here, sir.

The Court: Call him.

H. B. SCHURTZ

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is H. B. Schurtz?

A. That is right.

Q. And you are the owner and operator of
Schurtz Produce Company? A. Yes, sir.

Q. And that is located in Hutchinson, Kansas?

A. Yes, sir. [339]

Q. Mr. Schurtz, do you recognize the name of
Ben B. Hoffman? A. Yes, sir.

Q. Do you recognize the name of Acme Distribut-
ing Company of Mesa? A. Yes, sir.

Q. How do you recognize that name, Mr.
Schurtz?

A. Well, Mr. Hoffman called up by phone and
said it was Acme Distributing Company.

Mr. La Prade: For the record, may we object,
and move it be stricken. No identification of the
caller.

The Court: We will see about that later. Go
ahead.

Q. (By Mr. Eubank): Now, in regard to the
telephone call, Mr. Schurtz, could you identify the
exact date?

A. It was last May, our records show last May.

Mr. La Prade: What year was that?

The Witness: In May of 1954. It was 1954.

(Testimony of H. B. Schurtz.)

Mr. Eubank: May this be marked for identification?

The Clerk: Government's Exhibit 48 for identification.

(Said telephone bills and check were marked as Government's Exhibit 48 for identification.)

Q. (By Mr. Eubank): This phone call, how did it come? Was it prepaid, or a collect call? [340]

A. It was a collect call.

Q. And the person that received it, or, the person that you received it from, how did they identify themselves?

A. He said it was Acme Distributing Company of Mesa, Arizona.

Q. I show you Government's Exhibit 48 for identification, and ask you if you recognize those documents? A. Yes, sir.

Q. And what are those documents?

A. They are our telephone bills for the month of May, 1954.

Q. And what is the other document attached thereto?

A. That is our check in payment of the telephone bill.

Q. And how are these bills kept at your office?

A. I keep them in the phone book, and then they check them against the telephone bill when we get it each month.

Q. And how long do you retain this particular telephone slip?

(Testimony of H. B. Schurtz.)

A. We usually keep them several years.

Mr. Eubank: I ask that Government's Exhibit 48 be admitted in evidence.

Mr. Whitney: May I ask a question on voir dire?

The Court: All right.

Q. (By Mr. Whitney): Do you know Mr. Hoffman personally? [341] A. No, sir.

Q. Never talked to him? A. No, sir.

Mr. Whitney: I object to it on the grounds there is no identification of the caller.

The Court: It may be received.

The Clerk: Government's Exhibit 48 in evidence.

(Said telephone bills and check were received in evidence and marked as Government's Exhibit 48.)

Q. (By Mr. Eubank): Looking at Government's Exhibit 48 in evidence, can you place the exact day of the telephone call?

A. It was the 21st of May. This is the call here. Phoenix.

Q. Were there any subsequent calls to this one?

A. No, this is the first call. No, this was the second. The 21st was the first, I think. This is the 21st, yes. That is right.

Q. Were there any other calls?

A. There was a call about a week later.

Q. What date exactly was that?

A. That was the 29th.

(Testimony of H. B. Schurtz.)

Q. Now, the first call, would you read to the jury the place that is listed that it came from?

A. It is listed here as Phoenix. [342]

Q. And on the second call, would you list the designation? A. It is listed Mesa.

Q. Now, in regard to the first call, Mr. Schurtz, will you please tell the jury what was said by Mr. Hoffman?

A. Well, they called and wanted to buy some chickens, dressed chickens. And he talked to Mrs. Schurtz at first, because I was busy on the other phone when the call came in.

Q. Now, did you talk to him on the first call at all?

A. Yes, sir. She talked to him a while, and then I got in on the conversation when I got through with the other phone call, and he said he was Ben Hoffman of Acme Distributing Company.

Q. That is when you got on the phone?

A. That is right. I was on the phone at the same time she was. We have an extension in the office.

Q. I see. All right. Now, when you were talking to Mr. Hoffman personally, that is the conversation we are interested in. What did Mr. Hoffman say to you?

A. Well, he had given an order for some chickens.

Q. How many?

A. And she, you know, wanted to know whether we should ship him. I said we don't know him, and he said—and I heard this on the phone—that this

(Testimony of H. B. Schurtz.)

fellow in Albuquerque told him about us, and that is how he called to buy the chickens. [343]

Q. Do you remember the name?

A. The Broadway Poultry Company, in Albuquerque.

Q. And had you done business with them before?

A. Yes, sir.

Q. And had you had satisfactory relations with them? A. Yes, sir.

Q. On the basis of that phone call, what was the amount of poultry ordered?

A. It was four barrels. He wanted it right away, and we weren't in a position to ship right away, so we shipped him one barrel the next day, and followed up a couple of days later with the other three barrels by Express.

Mr. Eubank: May these be marked as exhibits?

The Clerk: Government's Exhibits 49 and 50 for identification.

(Said copies of Invoices were marked as Government's Exhibits 49 and 50, respectively, for identification.)

Q. (By Mr. Eubank): Mr. Schurtz, what were the terms?

A. Our terms are cash, but we shipped to Broadway Poultry, and they remitted on arrival.

Q. In the discussion with Mr. Hoffman, did you discuss payment terms?

A. Yes, sir, he agreed to pay on arrival.

(Testimony of H. B. Schurtz.)

Q. Have you ever received any payment for these? [344]

A. We received no word at all, or payment.

Q. I show you Government's Exhibits 49 and 50 for identification, and ask you if you recognize these documents? A. Yes, sir.

Q. Will you tell the jury what that document is.

A. This is a copy of the original shipment or invoice to him on the first bill.

Q. How were those kept in your office?

A. We kept them on file.

Q. And have those been on file since that date?

A. That is right, just the same as we keep all our records.

Q. And the Exhibit 49, when was that, when did you bring that with you?

A. I just brought it with me now.

Q. Okay. Looking at Exhibit 50, Government's Exhibit 50, for identification, do you recognize that document?

A. Yes, this is the additional 3 barrels shipped 3 days later. That is a copy of the original. The original was mailed with the shipment, with the Express Receipt.

Mr. Eubank: I ask that Government's Exhibits 49 and 50 be admitted in evidence.

Mr. Whitney: Objection as not properly identified. Immaterial.

The Court: Objection overruled.

The Clerk: Government's Exhibits 49 and 50 in evidence.

(Testimony of H. B. Schurtz.)

(Said copies of invoices were received in evidence and marked as Government's Exhibits 49 and 50.) [345]

Q. (By Mr. Eubank): Showing you Government's Exhibit 49 in evidence, I ask you to relate the contents of the first shipment.

A. 40 hens, that is chickens, 162 pounds, at 41c a pound, that is dressed and drawn. They were ice packed and shipped by express.

Q. And what particular express company, do you know? A. American Railway Express.

Q. Now, looking at Government's Exhibit 50, what were the contents of that?

A. Three barrels, 120 hens, 519 pounds, 41c.

Q. Now, would you relate first, as to Exhibit 49, what the date of that shipment was?

A. It is May 25th, 1954.

Q. And what was the date of the second shipment?

A. This was the second one. The first one was May 22nd, 1954.

Q. Now, Mr. Schurtz, have you ever been paid for this shipment? A. No, sir.

Q. In regard to the second telephone call, what was the content of that conversation?

A. Well, the phone call came in about a week later. As far as I know, I think this was the call that was on there, and he wanted ten more barrels, and I told him we couldn't supply him, [346] be-

(Testimony of H. B. Schurtz.)

cause we had regular orders, you know, that was taking about all the poultry.

And I asked him about the payment on the first one, and he said he would get it right out, and we never did hear any more.

Q. You never did receive it? A. No.

Q. Did Mr. Hoffman ever tell you that the merchandise was faulty?

A. Never told us anything. We never heard anything more. He was going to pay for this first shipment, which we never heard from.

Mr. Eubank: No further questions.

The Court: Is that all from this witness?

Mr. La Prade: No questions.

The Court: That will be all.

(Witness excused.)

The Court: Do you have any more witnesses now?

Mr. Eubank: No, sir.

The Court: All right, the Court will stand at recess until ten o'clock in the morning.

(Thereupon, an adjournment was taken to the following day, Friday, September 21, [347] 1956.)

September 21, 1956—10:00 A.M.

The Court: You may continue.

Mr. Eubank: I will call Mr. Hayward.

W. C. HAYWARD, SR.

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is W. C. Hayward, Sr?

A. W. C. Hayward, Senior, yes, sir.

Q. And you are the owner of Hayward Special Products? A. Yes, sir.

Q. And that is a cannery?

A. Canning plant, yes.

Q. In Hohen Solms, Louisiana?

A. Hohen Solms, Louisiana, yes.

Q. Mr. Hayward, do you recognize the name of Ben B. Hoffman? [348]

A. I certainly do.

Q. Do you recognize the name of Ben B. Hoffman Wholesale Grocers?

A. I recognize the name that he gave me.

Q. What name was that, sir?

A. He gave me Ben B. Hoffman, Wholesale Grocer.

Q. In relation to Mr. Hoffman, would you please tell the jury how you know that name?

A. On August 10, he rang me and wanted to know if I had any preserves.

Mr. La Prade: May we make our objection to the conversation as irrelevant, no foundation or identity.

The Court: All right.

(Testimony of W. C. Hayward, Sr.)

Q. (By Mr. Eubank): When you say "rang you," what do you mean by that?

A. He rang me up by telephone, from Tucson.

Q. What type of call was that? Was that a prepaid or a collect call? A. A collect call.

Mr. Eubank: I would like these exhibits marked for identification.

The Clerk: Government's Exhibit 51 for identification.

(Said telephone toll bill was marked as Government's Exhibit 51 for identification.) [349]

Q. (By Mr. Eubank): Mr. Hayward, I show you Government's Exhibit 51 and ask you if you recognize these documents?

A. Yes. My telephone bills.

Q. Now, would you look at each one of them, each of the documents there? Look at all them. Are all of those your bills, too?

A. I think that is all.

Q. And how do you know that they are your bills?

A. Well, it is sent to me, W. C. Hayward, from the telephone company.

Q. And are these the ones you brought with you this morning in reply to a subpoena?

A. Yes, sir.

Q. Mr. Hayward, in regard to these bills, how were they kept by you, as far as your records are concerned?

(Testimony of W. C. Hayward, Sr.)

A. Well, I keep all my bills each year to itself, filed to themselves.

Q. And these particular telephone bills, what station are they billed to? Are these your home phone or office phone?

A. That is the home phone. Well, that is the office phone. They have no phone at the factory.

Q. And where exactly is your home phone located? A. Right in the hall of my home.

Q. The city and state? [350]

A. Hohen Solms.

Q. Louisiana? A. Louisiana, yes.

Q. Can you identify the exact date of the calls, the first call?

A. The first call from Mr. Hoffman was——

Q. One moment, can you identify the exact date of the calls from Mr. Hoffman by referring to these bills? A. Yes.

Mr. Eubank: I ask that Government's Exhibit 51 for identification be admitted in evidence.

Mr. Whitney: We object to the introduction of Government's Exhibit 51 for identification in evidence upon the grounds that this shows matters in August, 1953, whereas Count X of the Indictment states that it is in August, 1954, and that would be completely wrong.

The Court: That is what the indictment recites.

Mr. Eubank: Your Honor, evidently a transcribing error was made in the Indictment itself, and that the actual year which we can show was 1953.

(Testimony of W. C. Hayward, Sr.)

The Court: Well, I don't know what you are going to do about that.

Mr. Whitney: You can't change the indictment.

The Court: If it was an Information, you might do it, but not an Indictment. [351]

Mr. Eubank: Your Honor, the defendant was amply informed of his rights, because we have two counts against Mr. Hoffman in regard to the Hayward transaction.

Count IX is also against Mr. Hoffman, and it recites the proper date, that on or about the 13th day of August, 1953, in the District of Arizona, and so forth.

The Court: I see. All right, go ahead.

Mr. Eubank: I ask that Exhibit number 51 for identification be admitted in evidence.

The Court: It may be received.

The Clerk: Government's Exhibit 51 in evidence.

(Said telephone toll bill was received in evidence and marked as Government's Exhibit 51.)

Q. (By Mr. Eubank): Mr. Hayward, I show you Government's Exhibit 51 in evidence and ask you if you can determine by looking at these bills the exact date of the first telephone call from Mr. Hoffman?

A. August 10th, from Tucson. That is the first time I heard from him.

Q. That is the first conversation that you recall?

A. Yes.

Q. Now, in regard to that conversation, Mr.

(Testimony of W. C. Hayward, Sr.)

Hayward, would you please relate to the jury how Mr. Hoffman identified himself? [352]

Mr. La Prade: If the Court please, may I have the witness on voir dire for one question?

The Court: You may cross-examine in a minute. Go ahead.

The Witness: Hoffman rang me up on the evening of August 10th. He asked me if I had any preserves. I told him yes.

He asked me what kind. I told him I had seedless blackberry preserves, fig preserves, and some other preserves.

Well, he only wanted fig preserves and blackberry preserves. He asked me when I could get the truck out. It was a van. I think the van, the maximum shipping weight of the van was something like 40,000 tons. I don't remember exactly.

The Court: Tons or pounds?

The Witness: Pounds, I should say. Pardon me.

At any rate, he asked me when I could get it out. I said I could start loading immediately. We went down the following day——

Q. (By Mr. Eubank): Now, in regard to that first telephone call, what did Mr. Hoffman tell you about his business, or did you inquire about his business in Tucson?

A. Yes, I inquired about his business, in order to give him the correct price. He said he was the largest wholesale dealer in Tucson. [353]

Q. Did he say anything else about his business capacity in Tucson?

(Testimony of W. C. Hayward, Sr.)

A. Well, I can't exactly recollect exactly what he said, but I asked him what business he was in, and he said he owned the largest wholesale business in Tucson.

Q. Now, on the first telephone conversation, did he make any—or what was the terms that were discussed, if any?

A. Well, I asked him what business he was in in order to give him the correct price and terms.

Q. Would you explain that to the jury, where the price differential comes in?

A. Well, we generally give the wholesaler about 5% less than the retailer.

Q. I see.

A. And I gave him the wholesale price, with the understanding that he would discount his bill within ten days.

Q. Now, on that particular point, would you tell the jury the exact terms? In other words, when was the payment to be made?

A. Within ten days from the time that he received the billing.

Q. Now, if he paid within ten days, what benefit would he derive?

A. He would have derived one per cent.

Q. And if he didn't take advantage of that, the ten-day [354] one per cent, what would have been the period he would have had to have paid the bill in any event?

A. Thirty days.

Q. And was that agreed on over the telephone?

(Testimony of W. C. Hayward, Sr.)

A. I can't say it was agreed on, but it is a known fact that——

Mr. Whitney: I object to that, if the Court please.

The Court: Yes, don't state that.

Q. (By Mr. Eubank): Mr. Hayward, did you tell him over the telephone that those were the terms?

A. No, I did not tell him over the telephone. I told him it would be one per cent ten days.

Q. I see. Over the telephone you discussed the one per cent in ten days? A. Yes.

Q. What did Mr. Hoffman say to that?

A. He said he discounted all of his bills, and I needn't to worry about the payment of them.

Q. Now, in this first conversation did you require or request any correspondence or letter or mail from Mr. Hoffman?

A. I asked him when he first rang me up to confirm the order in writing.

Q. And did he confirm the order?

A. Yes. [355]

Mr. Eubank: Mark this Government's Exhibit 52.

The Clerk: Government's Exhibit 52 for identification.

(Said letter was marked as Government's Exhibit 52 for identification.)

Q. (By Mr. Eubank): Mr. Hayward, I show

(Testimony of W. C. Hayward, Sr.)

you Government's Exhibit 52 for identification, and ask you if you recognize that document?

A. Yes, there is my handwriting.

Q. Do you recognize it? A. Yes.

Q. And what is the document?

A. That is confirming the order that Hoffman ordered over the telephone.

Q. And as to the receipt of this letter, how was the letter received?

A. Well, there is no one opened the mail except my boy and I. It was opened by me or my boy.

Q. Do you know whether you opened this letter or not? A. I couldn't swear to that, no.

Mr. Whitney: I beg your pardon, I couldn't hear that.

The Witness: I could not swear to that, that I opened the letter. It was either opened by my boy or myself.

Mr. Eubank: I offer Government's Exhibit 52 for identification in evidence.

Mr. Whitney: Objected to on grounds there is no sufficient [356] proof of mailing under the statement of the witness, and no proof at all of mailing, and no foundation laid for its introduction.

The Court: You are probably right, but I will let it be received temporarily here. I think when we used to try these cases, we would have somebody. I can't remember how the mailing was proved.

The Clerk: Government's Exhibit 52 in evidence.

(Said letter was received in evidence and marked as Government's Exhibit 52.)

(Testimony of W. C. Hayward, Sr.)

Q. (By Mr. Eubank): Now, in regard to Government's Exhibit 52 in evidence, I ask you to look at the document, and ask you if that covers the terms that were discussed in the first telephone conversation? A. I rang him up.

Q. Now, are these the terms in the first telephone conversation?

A. Yes. Those were the terms, but after I started loading the truck——

Q. Okay. Now, would you read to the jury the letter that Mr. Hoffman wrote?

A. "Confirming your telephone conversation, you can ship me at once 500 cases of blackberry preserves in 12-ounce tumblers, at \$2.85 per dozen; 25 cases of fig preserves in 18-ounce [357] cans at \$3.10 a dozen. Thank you in advance. Yours truly, Ben Hoffman."

Q. And was this the amount that was ordered in the first telephone conversation?

A. That was the amount that was ordered in the first telephone conversation.

Q. Now, Mr. Hayward, would you tell the jury the method by which mail is received in your company?

A. Well, it is put in the box in front of our store, and the canning plant has a mailbox. The store has a mailbox, and then the colored people on the place have a mailbox.

Q. How many people work in your office?

A. In the office? About four.

(Testimony of W. C. Hayward, Sr.)

Q. And at this time, on August 13, 1953, do you recall how many worked there then?

A. We haven't had a very large force there. A stenographer, my two boys and myself.

Q. Who usually collects the mail from the mail delivery box? Is anyone assigned to that task?

A. Well, it is anybody that is interested in the factory, and put on my desk.

Q. And the mail is put on your desk?

A. Yes.

Q. Now, who in your company is authorized to open the incoming mail? [358]

A. My boy and I.

Q. Are you two the only ones that are authorized to open it? A. Yes.

Q. Is that a fact as of August 13, 1953?

A. Yes.

Q. Is that the way it was done then?

A. Yes.

Q. Now, in respect to that date, you have testified that you cannot recall opening this particular letter yourself?

A. Well, it was either my boy or I. He opens all the mail. I don't open any, because I am across the lake. He is running the factory.

Q. Do you recall of your own recollection the approximate date that this got into your hand?

A. No, I could not. I couldn't remember that.

Q. Do you remember in subsequent telephone calls to Mr. Hoffman referring to this letter?

A. Yes.

(Testimony of W. C. Hayward, Sr.)

Q. And do you recall whether it was the second or third telephone call?

A. Well, it was the third after he rang me.

Q. It was the third telephone call after he rang you?

A. Yes. And then I rang him.

Q. And in a conversation relating to this letter, did [359] Mr. Hoffman make any statement regarding the letter? Did he say anything concerning it, do you recall?

A. No, I don't recall that he said anything.

Q. Now, Mr. Hayward, we have pretty well completed the conversation in the first telephone call.

In regards to the second telephone call, can you testify the date?

A. I rang Hoffman up.

Q. What date was that?

A. It was the 12th, I think.

Q. Would you consult Exhibit 51 in evidence?

A. The 12th.

Q. Now, what was the month?

A. August the 12th.

Q. August the 12th, 1953. And would you please tell the jury the nature of that conversation?

A. I rang him up to increase, to get his permission to increase the truck to its maximum load.

Q. What was the reason for increasing the truck's maximum load?

A. Well, it wouldn't have cost any more in freight to put the maximum load on.

Q. And what would the maximum load have been?

A. I can't offhand tell you exactly.

(Testimony of W. C. Hayward, Sr.)

Q. In that conversation would you relate what Mr. Hoffman [360] said to you?

A. Why, he was very much disturbed, because I didn't prepay the freight on the first load.

Q. Now, this is on August 12th. Had you already made a shipment?

A. No, I rang him asking him to increase the order.

Q. That is right. On August 12th?

A. On August 12th.

Q. On August 12th, what did Mr. Hoffman say to you when you were talking about increasing the shipment?

A. He asked me if I could get out another load. I told him yes, I would get out another load just as soon as I would receive his check. And he then gave me hell, if I express it right——

Q. That is all right.

A. For not prepaying the freight.

Mr. Eubank: Mark this as Government's Exhibit 53 and Government's Exhibit 54 for identification.

The Clerk: Government's Exhibits 53 and 54, respectively, for identification.

(Said Invoice and said Bill of Lading were marked as Government's Exhibits 53 and 54, respectively, for identification.)

Q. (By Mr. Eubank): Mr. Hayward, I now show you Government's Exhibit 53 [361] for identification, and ask you if you recognize that document? A. That is my writing.

(Testimony of W. C. Hayward, Sr.)

Q. And what document is that, or what type of document? A. That is a bill.

Q. What type of a bill? I mean, how is that used in your company?

A. Well, I don't quite understand.

Q. This evidently is one of your company forms?

A. Yes, Hayward Special bill.

Q. How do you use that in regard to your shipments made? A. I just mail it out.

Q. Is there any technical name for this type of paper that is used in the trade?

A. No, it is just a billing, that is all.

Q. Could it be also called an invoice?

A. Invoice, a billing invoice.

Q. In regard to this billing, do you recognize this particular document?

A. Yes. It is my handwriting. I wrote it.

Q. And in what relation do you recognize it, as far as this case is concerned?

A. What relation I——

Q. Yes, in other words, what relationship does this document have to this case? This is United States versus Ben Hoffman. [362]

A. Well, it is an unpaid bill. That is all I know, it is an unpaid bill.

Q. And the billing is to whom?

A. Ben Hoffman.

Q. Does this contain the terms of the shipment to Mr. Hoffman? A. No, it does not.

Q. Does it contain the amount?

A. Yes, the amount.

(Testimony of W. C. Hayward, Sr.)

Mr. Eubank: I ask that Government's Exhibit 53 be introduced in evidence.

Mr. La Prade: We object to its introduction. No foundation laid that it was ever received by the defendant.

The Court: It may be received.

The Clerk: Government's Exhibit 53 in evidence.

(Said Invoice was received in evidence and marked as Government's Exhibit 53.)

Q. (By Mr. Eubank): And now, Mr. Hayward, showing you again Government's Exhibit 53 in evidence, is this the original of this statement?

A. Yes.

Q. This is the original? A. Yes.

Q. And were any copies made at that time?

A. We always keep a copy. [363]

Q. And was any of these sent with the shipment? A. Yes.

Q. Which copy, or which one?

A. Well, the second copy was sent. The original was sent to the customer, and a copy was filed away.

Q. Now, which one is this?

A. That is a copy.

Q. This is the copy? A. Yes.

Q. Is this the one that was filed away?

A. Yes.

Q. Now, I show you Government's Exhibit 54 for identification, and ask you if you recognize this document? A. That is my writing.

Q. Do you recognize the document?

(Testimony of W. C. Hayward, Sr.)

A. Yes.

Q. And how do you recognize it?

A. Well, it is transportation, shipping transportation, Herrin Transportation Company, and we shipped all the preserves out by the Herrin Transportation.

Q. Would you tell me if this is an original or a copy? A. This is a copy, I guess.

Q. And where on this type of thing does the original usually go?

A. The original is supposed to go to the [364] shipper.

Q. How many of the copies do you retain?

A. Of these we retain two.

Q. And is this one of the copies that you retain?

A. Yes.

Q. How does this shipment relate to this case?

A. Well, he ordered 500 cases of blackberries.

Q. You say he. Who is that? A. Hoffman.

Q. And is this that shipment?

A. Yes. I have increased it 100 with his permission.

Q. Right.

Mr. Eubank: I ask that Government's Exhibit 54 for identification be admitted in evidence.

Mr. Whitney: Object to it on the grounds no foundation is laid, and not binding on the defendant.

The Court: It may be received.

The Clerk: Government's Exhibit 54 in evidence.

(Testimony of W. C. Hayward, Sr.)

(Said Bill of Lading was received in evidence and marked as Government's Exhibit 54.)

Q. Now, looking at Government's Exhibit 54 in evidence, Mr. Hayward, will you please recite to the jury the amounts that were shipped, and the place from which they were shipped to where?

A. The amount of this?

Q. On your shipment, yes. [365]

A. There was 600 24/12 oz. tumblers blackberry preserves; 25 cases 24/13 oz. cans of preserved figs.

Q. They were shipped from what point?

A. They were shipped from Hohen Solms, the factory, to Tucson.

Q. And consigned to whom?

A. To Ben B. Hoffman, Tucson, 1610 South 4th Avenue.

Q. And that is in Arizona? A. Yes.

Q. Now, going back to the telephone conversations that you testified having with Mr. Hoffman, was there a third telephone conversation between you and him?

A. Well, in Waveland, I rang him up and I think I spoke to his secretary, or his wife, I don't know who, trying to find out when he was going to pay for that car of preserves.

Q. In that regard, Mr. Hayward, was that the call that was on August 25th? You can consult the Exhibit 51, Government's Exhibit 51. Would you define the date?

A. August 17th. Oh, yes, on August 25th he

(Testimony of W. C. Hayward, Sr.)

hadn't paid the bill, and he led me to believe that he was going to discount the bill, and he was very much disturbed, said he wanted another carload of preserves.

Q. On August 25th, he asked for another order, is that correct? A. Yes. [366]

Q. Was there any explanation made of why the bill had not been paid at that time?

A. He told me the check had been made out, and he didn't know why his stenographer hadn't mailed it.

Q. And was there anything else said about the shipment?

A. Yes. He was very much disturbed because I didn't pay the freight on the first carload, and he wanted another carload immediately.

I told him I would ship him another carload as soon as I received the money for the first carload.

Q. And did you ever receive the money in payment for your first account? A. Not yet.

Q. Referring to Government's Exhibit 56, would you read to the jury the amount of your initial billing?

A. 600 cases of seedless blackberry preserves in tumblers at \$2.85, \$3,420.00.

25 cases of 24/12 oz. fig preserves in tin at \$3.10 per dozen, \$155.00; total, \$3,575.00.

Q. Now, subsequent to the call of August 25th, have you ever received any payment, any part payment on this shipment? A. No.

(Testimony of W. C. Hayward, Sr.)

Q. Were there any other telephone calls made by you to Mr. Hoffman after August 25th?

A. I rang him up from Waveland, [367] Mississippi.

Q. Can you tell us the date of that call from looking at those? A. September 26th.

Q. On that call, would you please relate to the jury the conversation you had?

A. I hadn't spoken to Hoffman after I spoke to him to increase the order, and I never could get him. I spoke to his wife or secretary, I don't know who.

Q. How about August 25th? You mean since August 25th you haven't spoken to Ben Hoffman personally? A. No.

Q. That you know of? A. No.

Q. Actually, you have never seen Mr. Hoffman, have you, Mr. Hayward?

A. I have got his picture.

Q. And from that picture, could you identify him in this courtroom? A. Yes.

Q. Would you point him out to the jury, please?

A. Right straight back of you.

Q. What color coat does he have on?

A. It looks kind of reddish to me. I don't know.

Q. Now, Mr. Hayward, in regard to the receipt of the letter that you identified as receiving from Mr. Hoffman, would [368] your shipment have been made if you hadn't received the letter? Would it or wouldn't it have?

A. I think it would have. I would have saved

(Testimony of W. C. Hayward, Sr.)

100 cases of blackberries if I had shipped before I received—oh, before I received the letter?

Q. Yes.

A. Oh, no. I held the shipment up until I got that letter.

Q. Now, what was the signature of this letter to you? Why did you hold the shipment up until you received the letter?

A. Well, a new customer, we generally have them to confirm the order by letter.

Q. And why is that?

A. Merely for our record, I guess. I don't know. A misunderstanding over the phone, or something. There are sometimes some misunderstanding over the phone.

Q. Okay. And after August 25th, you never heard from Mr. Ben Hoffman again? A. No.

Q. Is that correct? A. That is correct.

Mr. Eubank: No further questions.

Cross-Examination

By Mr. La Prade:

Q. Mr. Hayward, what date were the preserves shipped, can [369] you tell?

A. August the 17th.

Q. And you have testified that the phone call, the first phone call that was placed to you from a Mr. Hoffman was on the 10th day of August, 1953?

A. Yes.

Q. Now, do you know whether in fact your son

(Testimony of W. C. Hayward, Sr.)

received a phone call before you did, and then you returned the call to discuss the business transaction?

A. You mean in ordering the preserves?

Q. No, sir. I mean, did your son first receive a phone call from Tucson?

A. I don't think my son ever spoke to him. I don't think so. Not that I know of.

Q. You have a phone bill in your hand, sir?

A. Yes.

Q. You say you never did receive any token payments? A. Not a dime.

Q. In other words, you never shipped any merchandise on account of having received some payment? You only made one shipment, is that right?

A. Yes, that is all.

Q. And was the order placed when you called him, or when he called you? Can you clarify that for me, sir?

When did he order the merchandise? [370]

A. On August 10th.

Q. On the phone when he called you, or would you consider this your order for the merchandise?

A. Well——

Q. I am referring to Government's Exhibit 52 in evidence.

A. Ordinarily, now, we ship quite a lot of preserves to Houston, Texas. If they order by phone, why, if it is a complicated order, why, I might ask them to confirm it. At the same time, I may ship them without the confirmation.

Mr. La Prade: No other questions.

(Testimony of W. C. Hayward, Sr.)

Redirect Examination

By Mr. Eubank:

Q. Mr. Hayward, in regard to new business, would you state again your custom as to new business, requiring writing?

A. Well, we have very, very few new customers, and naturally if we should get a new customer, we would like to know a little about him, and we might ask for some recommendation, or what kind of business he is in.

In fact, Hoffman is about the only new customer we have had in the last ten or twelve years.

Q. How long have you operated the plant, Hayward Special Products?

A. About forty years.

Mr. Eubank: No further questions.

Mr. La Prade: That is all.

(Witness excused.) [371]

Mr. Eubank: At this time, your Honor, as there is some doubt of the letter form, I ask that the jury be allowed to compare the letter received by Mr. Hayward and the letter previously identified as Exhibit 15.

The Court: Are they both in evidence?

Mr. Eubank: Yes, sir.

The Court: Show anything in evidence to the jury you want to.

Mr. La Prade: For the record, may I again object to these exhibits being demonstrated to the

jury, for the reason that they are both in the same category, neither one of them properly identified as being sent by the defendant.

The Court: All right.

Mr. Eubank: As you recall, ladies and gentlemen, Mr. Rouland Goodman testified——

Mr. La Prade: I object.

The Court: Yes. You can argue the case later.

Mr. Eubank: All right.

Mr. La Prade: I object to his explaining it to the jury.

The Court: All right. When you argue the case you explain it to them.

Mr. Eubank: All right.

I would like to call Mr. Edward R. Belton.

EDWARD R. BELTON

called as a witness in behalf of the Government, having been [372] first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Edward R. Belton?

A. Yes.

Q. And you are the secretary and treasurer of Citizens Transfer and Storage Company?

A. That is right.

Q. And that is located in Tucson, Arizona?

A. Yes, sir.

Q. Mr. Belton, you are here under a subpoena duces tecum, is that right? A. Yes, sir.

(Testimony of Edward R. Belton.)

Q. And also in regard to a certain shipment in storage of some Hayward Special Products?

A. Yes, sir.

Q. And that was in approximately August, 1953?

A. Yes, sir.

Q. Did you bring those documents with you?

A. I did. (Handing to counsel.) Those are the receipts we deliver the merchandise from.

Q. These are all the deliveries?

A. Yes, sir.

Mr. Eubank: I ask that this be marked as Exhibit 55 for identification. [373]

The Clerk: Government's Exhibit 55 for identification.

(Said Freight Bills were marked as Government's Exhibit 55 for identification.)

Q. (By Mr. Eubank): Showing you Government's Exhibit 55 for identification, I ask you if you recognize these documents? A. Yes, sir.

Q. Will you tell the jury what the documents are?

A. First there is a freight bill issued by the Brazwell Motor Company who hauled the merchandise into Tucson and delivered it to us. There were 599 cases of——

Q. That is all right.

A. This is merely a memo copy to keep the inventory. This is a copy of our receipt.

Q. Do you recognize the bill form?

A. Yes, sir; this is my own handwriting.

(Testimony of Edward R. Belton.)

Q. The next one?

A. Yes, sir; that is my own handwriting.

Q. And the next one?

A. It supports these. Yes, sir; it is a bill of lading issued by the Southern Pacific Freight Line.

Q. And what does this set of documents represent in your company's records?

A. It represents the receipt of this merchandise, and the delivery of the merchandise from these documents. [374]

Q. You can tell the dates you received the merchandise and the dates you disbursed it?

A. That is right.

Q. And in this particular filing, it relates to whom, what party or what company?

A. Well, this was a shipment received from the Hayward Special Products Company, via the Brazwell Freight Line.

Q. For whom?

A. It was consigned to Ben B. Hoffman, care of our company.

Q. And this particular file relates, does it, to this individual, or to that individual?

A. No, sir, the goods was stored for account of Ben B. Hoffman.

Q. Thank you.

Mr. Eubank: I ask that Government's Exhibit 55 be admitted in evidence.

Mr. La Prade: Your Honor, for the record, we object to the introduction of Exhibit 55 in evidence on grounds that it is hearsay, incompetent, irrele-

(Testimony of Edward R. Belton.)

vant, and immaterial, and not binding on the defendant.

The Court: It may be received.

Mr. Eubank: If your Honor please, I would like to eliminate a lot of these extraneous records. All we are interested in showing is just the—— [375]

The Court: Why did you have them marked, then?

Mr. Eubank: There are so many of them, I thought it might save time, but I notice there are some extraneous documents.

The Court: You better sit down and withdraw those from your exhibits.

We will have our morning recess while he does it.

(The morning recess was had.)

The Court: You may continue.

Q. (By Mr. Eubank): Now, in regard to Government's Exhibit 55 for identification from these documents, can you determine the dates, the exact dates that goods were received by you and goods shipped by you in regard to Ben Hoffman and Hayway Special Products?

A. Yes, sir. We received this——

Q. You can determine? A. Yes, I can.

Mr. Eubank: I now offer Government's Exhibit 55 in evidence.

The Court: All right. He deleted some of it?

Mr. Eubank: Yes.

Mr. La Prade: We object to its introduction on

(Testimony of Edward R. Belton.)

the ground it is not connected with the defendant, neither is it relevant or material to this case. [376]

The Court: All right, it may be received.

The Clerk: Government's Exhibit 55 in evidence.

(Said Freight Bills were received in evidence and marked as Government's Exhibit 55.)

Q. (By Mr. Eubank): Referring now to Government's Exhibit 55 in evidence, can you tell or give us the date that you received, and the quantity that you received, and the date that you shipped Haywards Special Products?

A. Yes, sir. We received through the Brazwell Motor Freight Lines 599 cases of 24/10 oz. tumblers blackberry preserves, and 25 cases of 24/12 oz. canned fig preserves on August 24, 1953.

On that same date we delivered our delivery receipt No. 22301, 200 cartons of blackberry preserves, to the Goodman Grocery Warehouse at Tucson.

On August 25th, we shipped by the Southern Pacific Company on our receipt No. 22302, 10 cases of blackberry preserves to the Simpson Market at Tempe.

Mr. Eubank: No further questions.

Cross-Examination

By Mr. La Prade:

Q. Mr. Belton, do you know of your own knowledge what happened to the balance of those preserves? A. Yes, sir. [377]

Q. What?

(Testimony of Edward R. Belton.)

A. They were delivered to the Brice Company. They came to the warehouse and picked them up. You mean the balance?

Q. Yes. How did that happen, do you know?

A. What do you mean, how did it happen?

Q. By virtue of what did Brice get them, and when. You have testified there was a Sheriff's sale.

A. They were replevined and sold at a Sheriff's sale.

Q. In other words, the balance of that shipment was never delivered to anybody else, or for Mr. Hoffman, or anybody else? A. No.

Q. It was just on an attachment or execution of Sheriff's sale, is that right?

A. Yes, that is all.

Mr. Eubank: No further questions.

The Court: That will be all.

(Witness excused.)

ROULAND GOODMAN

recalled as a witness in behalf of the Government, having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Rouland Goodman?

A. Yes, sir.

Q. And you were before the jury two days ago, I believe? [378] A. Yes, sir.

Q. And that was in regard to Brice pickles?

(Testimony of Rouland Goodman.)

A. Yes, sir.

Q. Now, Mr. Goodman, you are the owner and operator of Goodman's Market, and as I recall, you identified Mr. Ben Hoffman? A. Yes, sir.

Q. Now, do you recall any purchases of Hayward Special Products blackberries from Mr. Hoffman? A. Some preserves, yes, sir.

Mr. Eubank: Mark this as Government's Exhibit 56 for identification.

The Clerk: Government's Exhibit 56 for identification.

(Said documents were marked as Government's Exhibit 56 for identification.)

Q. (By Mr. Eubank): I show you Government's Exhibit 56 for identification, and ask you if you recognize those documents? A. Yes, sir.

Q. And how do you recognize these documents?

A. It has been received on our receiving form and signed by our warehouse foreman at the time.

Q. And this first item, that is your foreman's signature?

A. That is our foreman's signature.

Q. Now, the second document, do you recognize that? [379]

A. Yes, it is the invoice for the merchandise. Yes, it has been stamped Paid.

Q. And the third document, you say that is your form? A. That is our receiving form.

Q. Now, in regard to these documents, Mr.

(Testimony of Rouland Goodman.)

Goodman, how are they kept, again, by your company?

A. When our foreman receives merchandise, he has a receiving form to write it down on which he files, which is supposed to match up with the freight bill, which is supposed to match up with the invoice.

Q. These documents here are in that regard, is that right? A. Yes.

Mr. Eubank: I offer Government's Exhibit 56 in evidence.

Mr. La Prade: We object to its introduction on the grounds it is irrelevant and immaterial, no connection with this defendant.

The Court: It may be received.

The Clerk: Government's Exhibit 56 in evidence.

(Said Invoice, and so forth, were received in evidence and marked as Government's Exhibit 56.)

Q. (By Mr. Eubank): Now, referring to Government's Exhibit 56 in evidence, do you recall the conversation that preceded your purchasing this item with Mr. Hoffman?

A. I don't recall. [380]

Q. Is there anything you do recall about the transaction?

A. I remember of buying it from him. That is about the extent of it.

Q. Now, will you please read to the jury the amount of purchases that you made at this particular time?

(Testimony of Rouland Goodman.)

A. There was 200 cases of 24/12 oz. Hayward's Special Seedless blackberry preserves.

Q. What was the date they were received?

A. On the 8/25/53.

Q. That is August 25th? A. Yes.

Mr. Eubank: Mark this Government's Exhibit 57, please.

The Clerk: Government's Exhibit 57 for identification.

(Said check was marked as Government's Exhibit 57 for identification.)

Q. (By Mr. Eubank): I show you Government's Exhibit 57 for identification, and ask you if you recognize that document? A. Yes.

Q. And how do you recognize the document?

A. It is made out on our—it is our check, company check of which I have signed. I recognize my own signature, which states on it what it was in payment of.

Q. Now, is it possible from that check to relate it to a particular purchase? [381]

A. Well, yes, this has the invoice date and the amount, and exactly what was on the invoice.

Mr. Eubank: I ask that Government's Exhibit 57 be admitted in evidence.

Mr. La Prade: Object to it, your Honor, as hearsay, irrelevant and immaterial, in connection with this defendant.

The Court: It may be received.

The Clerk: Government's Exhibit 57 in evidence.

(Testimony of Rouland Goodman.)

(Said check was received in evidence and marked as Government's Exhibit 57.)

Q. (By Mr. Eubank): Now, looking at Government's Exhibit 57, and looking at Government's Exhibit 56, can you tell the jury what the check is in payment of?

A. The check is in payment of 200 cases of preserves at \$3.70 a case, \$740.00.

Q. Does it relate to Government's Exhibit 56 in evidence?

A. Yes, it is in payment of this merchandise received at that time.

Mr. Eubank: Thank you. I have no further questions.

The Court: Will that be all from this witness?

Mr. La Prade: No questions.

(Witness excused.)

Mr. Eubank: I would like to call Mr. John [382] Glass.

JOHN L. GLASS

called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Eubank:

Q. Your name is Mr. John L. Glass?

A. Yes, sir.

Q. And in what capacity do you serve with the C. A. Glass Company? A. President.

(Testimony of John L. Glass.)

Q. Mr. Glass, this company is located at 7001 East 7th in Los Angeles, California, is that correct?

A. As of that particular time it was 1701 East 7th. We are now 735 East 4th Street.

Q. How long have you been with the company?

A. Since 1938.

Q. Mr. Glass, do you recognize the name of Ben B. Hoffman? A. Yes.

Q. Do you recognize the name of Acme Distributing Company? A. Yes.

Q. How do you recognize these names?

A. I don't understand your question.

Q. The particular names, have you met these people before personally, or how have you heard of Ben B. Hoffman and Acme [383] Distributing Company?

A. Well, the first I had heard of the Acme Distributing Company was from a phone call placed at my office, a collect phone call to me.

Q. And approximately what is the date, if you recall, of that? A. October 11th, 1955.

Mr. Eubank: I ask that these be marked as exhibits.

The Clerk: Government's Exhibit 58 for identification.

(Said toll slips, etc., were marked as Government's Exhibit 58 for identification.)

Q. (By Mr. Eubank): Referring to Government's Exhibit 58 for identification, I ask you to

(Testimony of John L. Glass.)

look at each of the documents there and tell the jury whether you recognize the documents?

A. I recognize these documents.

Q. And how do you recognize the documents?

A. Well, there are checks and both of these are our checks, and these are telephone bills for October-November, 1955.

Q. And how are those records kept by your company?

A. Well, they are filed. They are filed under a voucher system, check voucher system.

Q. And these particular copies, how long are they kept?

A. Oh, we have got them back about 15 years, all of our [384] checks.

Q. And are these those exact copies that you keep in your record? A. Yes, sir.

Q. In regard to these telephone bills, can you tell by referring to the bills the exact date of the collect call you have mentioned? A. Yes.

Mr. Eubank: I ask that Government's Exhibit 58 for identification be admitted in evidence.

Mr. Whitney: We object to this on the grounds previously made, that there is no showing who the caller was, no identification.

The Court: All right, it may be received.

The Clerk: Government's Exhibit 58 in evidence.

(Said toll slips and copies of checks were received in evidence and marked as Government's Exhibit 58.)

(Testimony of John L. Glass.)

Q. (By Mr. Eubank): Now, referring to Government's Exhibit 58 in evidence, will you refer to the toll slips and find out the exact date of the first telephone call?

A. Here it is in here, October 11th.

Q. And would you read to the jury the toll station on that charge?

A. It says PNX, which stands for Phoenix, C, \$2.30. [385]

Q. And the date again? A. October 11th.

Q. Now, regarding this phone call, would you state what you remember that Mr. Hoffman said to you?

A. Well, the phone call came in to the secretary, and they referred a collect call to me, my office, because he says, my secretary said to me, "There is a collect call from Phoenix. Do you want to take it?"

I said, "I'll take it." And the conversation went something like this, in fact, it did go like this:

"This is the Acme Distributing Company, Ben Hoffman speaking. Johnnie, you must remember me. I met you about a year ago down in the market."

I said, "Oh, yes." I said that because we have a lot of——

Q. That is all right.

A. Customers. You don't want me to say any more?

Q. No. A. All right.

(Testimony of John L. Glass.)

Q. Now go ahead with what he said.

A. Then he said, "Some of my boys this time of year have been getting some calls for California dates, now that it is October and the holiday season, and we think we could probably move quite a few down here for you. I have seen some in some of the stores here, and they look pretty good. Could you give [386] me a quotation of prices?"

And I quoted him a certain price on a certain pack, 24 one-pound case, also a date-nut confection in a 2½-pound pack.

So then he said, "Well, you better send down a sample of it." I have forgotten at this time exactly how many, but I believe it is in our ledger what was shipped. And he said, "So we can see how the merchandise is." I said, "Okay, I'll do that."

He said, "Okay, Johnnie, I'll see you later."

Q. And that was the termination of the first telephone conversation? A. Yes.

Q. And were the goods shipped?

A. Yes, they were shipped that day.

Q. Now, if you were to refer to the ledger sheet of your company, could you tell the exact amount of the shipment? A. Yes, sir.

Q. And the terms at that day that you quoted?

A. Yes, sir.

Q. Referring to Government's Exhibit 18 in evidence, I ask you if you recognize that document?

A. Yes. It is our ledger sheet.

Q. By your ledger sheet, you mean your company's?

(Testimony of John L. Glass.)

A. That is right. It is the ledger sheet of the C. A. Glass [387] Company.

Q. Referring to the ledger sheet, Mr. Glass, can you tell the date of the first shipment?

A. October 11th, 1954.

Q. And can you tell the amounts shipped in that shipment?

A. There is 25 Gold Cup brand natural, 24 1-pound dates—this isn't the billing, this is the ledger, so it just shows total amount.

And 25 Gold Cup brand hydrated dates, 12 3-pounders, and he has got notations in here in small letters of the prices.

25 Gold Cup hydrated 12-3's.

Q. And what was the total amount of the charge?

A. On this shipment there was 25 and 25. He is doubled on the lines here. There was 50 cases, and the amount was \$291.00.

Q. Now, if you saw your company invoices, would that help you in identifying the actual terms?

A. Yes.

Q. I show you Government's Exhibit in evidence 19, and ask you if you recognize these documents?

A. Yes. That is our billing.

Q. Now, in regard to the billing, can you determine from that document the amounts of the first shipment?

A. Yes. [388]

Q. And what were the amounts?

A. Well, there was 25 Gold Cup natural, 24 1-pound dates at \$4.44 a case, \$111.00; and 25 Gold

(Testimony of John L. Glass.)

Cup hydrated, 12 3-pound cases of dates at \$7.20 a case, \$180.00, total \$291.00.

Q. Now, in regard to your conversation with Mr. Hoffman, were the specific terms of payment discussed? A. No, they weren't discussed.

Q. Was there any reason why you did not discuss the terms of payment with him?

A. Yes, because generally when we talk to a customer, we don't discuss terms. We have an industry terms.

Q. Did you believe this man to be a customer, or a member of the industry?

A. I believed him to be a customer and a member of the industry.

Q. And what did he say that led you to this belief?

A. Well, in Los Angeles, there was over years past, in my experience of 15, 18 years, there has been three or four Acme Distributing Companies, from some place. I probably sold 5,000 different customers, but I know in my memory when someone says to me, This is Acme Distributing Company, it comes out of my memory that there was a customer by that name. So there wasn't any doubt in my mind when somebody was calling and placing an order, there was just no reason to doubt that he wasn't in business, or that he was—I don't know what the [389] word would be.

Q. Now, were any payments ever made on the—well, was this first shipment the only shipment made by your company to Mr. Hoffman?

(Testimony of John L. Glass.)

A. No, we made further shipments.

Q. These shipments were made from which office or plant of your company?

A. Well, they were probably made from our Del Monte plant where the dates are packed, our office being in Los Angeles, and probably they were shipped directly from the plant to the trucking line.

Q. In the first telephone conversation, was there any mention made by Ben of a shipper to be used?

A. Yes, I asked him how shall we ship them, and he said, "send them down to Watson Brothers trucking lines, and they will take them from there."

Q. Now, was any payment ever made on the first shipment and the subsequent shipments made by you? A. One payment was made.

Q. Do you recall the date of that payment, and the type of payment it was?

A. I don't recall the date without seeing the ledger, but I recall the type of payment.

Q. What was that type of payment?

Mr. Whitney: I object on the ground that is not the best [390] evidence. He should have some record of it.

The Court: If he knows.

The Witness: The type of payment was Cashier's Check.

Mr. La Prade: This has been testified to already.

The Court: I don't remember.

Q. (By Mr. Eubank): In regard to the Cashier's Check, Mr. Glass, is there anything out of the

(Testimony of John L. Glass.)

ordinary with the payment in your business by a Cashier's Check?

Mr. Whitney: I object as immaterial.

The Court: I don't see the purpose either.

Mr. Eubank: I think his answer, your Honor, can demonstrate materiality.

The Court: When is he going to begin to answer?

Mr. Eubank: Right now.

The Court: We will see. Go ahead.

The Witness: You want me to answer?

Mr. Eubank: Yes, sir.

The Witness: The Cashier's Check, we never receive a Cashier's Check from any business. It is always a business check or a personal check. In fact, in years, I don't think we have ever received a Cashier's Check in payment of merchandise.

Q. (By Mr. Eubank): In the years you have been in this particular line of [391] merchandising, how many similar transactions have you, or how many transactions have you been in that you have received something like a Cashier's Check?

Mr. Whitney: I object to it as immaterial.

The Court: Something like a Cashier's Check?

Mr. Eubank: A Cashier's Check.

The Court: He may answer.

The Witness: I never received a Cashier's Check, to my knowledge, for payment of merchandise.

Q. (By Mr. Eubank): This is the first one you remember? A. Yes.

Mr. Eubank: No further questions.

(Testimony of John L. Glass.)

Cross-Examination

By Mr. La Prade:

Q. Mr. Glass, you have related the conversation, for the most part, in all of the important portions of that conversation, is that right, to the best of your knowledge? A. Yes.

Q. And you stated that you had heard Acme Distributing Company before in your business in California, and you assumed it might be the same one, and for that reason you went ahead and shipped the merchandise, is that right?

A. That is right. [392]

Q. And you were relying upon your past recollection of having heard the name Acme Distributing Company, and an order being placed, and that was what prompted you to go ahead and make the shipment, is that right, sir? A. That is right.

Q. Wouldn't it be a fact that it was not, that there was not anything specifically promised you over the telephone which induced you to make the shipment, that is, by way of "I promise to pay you promptly," or anything like that? You haven't testified to any such conversation, and isn't it true that wasn't said? A. It was not said.

Q. As a matter of fact, you didn't even discuss the terms, isn't that correct?

A. No, because we never discuss the terms.

Mr. La Prade: That is all.

(Testimony of John L. Glass.)

Mr. Eubank: At this time, your Honor, there was Government's Exhibit 21 for identification, that was the application for the money order, the \$200 check that was identified by the bank, and this was identified at that time as part of the bank's record, and at this time I would like to offer it in evidence.

Mr. La Prade: If the Court please, there never was any testimony——

The Court: The signature was never identified? [393]

Mr. La Prade: Never identified who made the application.

Mr. Eubank: I believe under the Comparison Rule that the signature could be identified by the finders of fact.

The Court: You proved the defendant's signature here a good many times. Why don't you prove it in the right way?

Mr. Eubank: All right, sir.

Mr. Whitney: It is a Cashier's Check.

The Court: That is the application for it. You don't need this witness for that purpose, do you?

Mr. Eubank: No, sir, no further questions.

(Witness excused.)

The Court: With the testimony of this witness, that might be sufficient. I will receive the application.

Mr. Eubank: All right, sir.

The Clerk: Government's Exhibit 21 in evidence.

(Said Application for Money Order was received in evidence and marked as Government's Exhibit 21.)

Mr. Eubank: At this time, your Honor, we have no more witnesses to present, no more evidence to present.

The Court: You want to rest, then?

Mr. Eubank: Yes, sir.

The Court: All right.

Mr. Whitney: We have a matter to take up with the Court, if the Court pleases.

The Court: All right. The jury may be excused until [394] 1:30 this afternoon, and keep in mind the Court's admonition.

(Thereupon the jury retired from the court room.) [395]

(The following proceedings were had out of the hearing and presence of the Jury.)

The Court: All right.

Mr. La Prade: At this time, if the Court pleases, the defendant desires to make a motion for a judgment of acquittal on each and every count of the indictment, upon the general ground, first, that the Government has failed to support its allegations that there was a scheme to defraud; and, further, on each and every count, that even if a scheme to defraud was in fact made out, that the individual counts are not supported by adequate evidence that the defendant is the person who made the calls, or mailed the documents, the substance of the charge.

With your permission, your Honor, and I know this evidence has been lengthy, and it is in some bit of confusion; however, we have had an opportunity to weld it together, so to speak and I would like to first point out to your Honor that the meat of the charge in the so-called scheme as set out in the indictment is that the defendant used these names, Hoffman Wholesale Grocery and Acme Distributing Company, and made representations as follows, and I quote:

“That they were an active and responsible business concern, and that they had good credit ratings, and that the goods ordered would be paid for promptly and in full.”

I point out to your Honor, first, that not one witness [396] has testified that the defendant said to them that he had a good credit rating.

Second, that only one witness testified that the defendant said he would pay them promptly, and that was the gentleman from the chicken factory that testified yesterday, and in that count there was no evidence that the defendant ever received the chickens, or was connected in any way with having made the phone call.

Now, your Honor, we feel that the Government has further failed to show this scheme, in that, if you will recall Mr. Glass just now, on Count II, I believe, your Honor, has testified he shipped this merchandise relying on his own memory of things happening in the past. No promises made to him by the defendant; and that was the substance of it. It was a credit transaction of the defendant. They

didn't even discuss the terms. No promises made. Therefore, no illegal phone call.

We state that the Government, although they have shown isolated transactions, in the first place, they have not alleged that there was a continuing scheme, which we raised before on our motion to dismiss the indictment, that there was a continuing scheme, and as a result all these things took place. The Government has shown in all these transactions what can be explained as business failure, and nothing criminal has been made out. [397]

In particular, we feel they must prove on each count that these representations of this particular scheme they have alleged were made. Virtually every one of these witnesses has testified that the credit was not discussed. In fact, we know the credit was not discussed, or they wouldn't have ever shipped this merchandise. But no testimony that the defendant said, "I will pay you promptly and I have a good credit rating."

One witness testified the defendant said he was the largest grocer in Tucson. That was today, referring to the count on Mr. Hayward.

Getting to these individual counts, your Honor. Count VI, I believe was dismissed. Count I, the Long's Date Gardens, your Honor will recall on the first testimony from Mrs. Darling that, and the prosecutor stated in his opening statement, was that the essence of this scheme was lulling payments in small quantities so they would produce further shipments. Mrs. Long testified, and I believe we adequately showed the check she received was after she

had made her last shipment. The envelope was dated the 13th, and I think it is obvious she didn't get it in Los Angeles until the 14th, and the last shipment was made on the 13th, so there couldn't have been any lulling involved; and I believe there is only one other account where there was anything that was paid and there was a later shipment, and that is referring [398] to the gentleman who testified today.

We feel that in Count I, a wire count, a long distance phone call, the Government has wholly failed to make out its case, the principal reason for which is that nobody has testified that they heard a voice which they recognized.

And in the second instance, nobody has testified that they heard the defendant make the call, or that they observed him make the call; therefore, there is no direct evidence. And referring to circumstantial evidence, I refer to the rule, your Honor, and I want to call your attention to the distinction between a person who has called at a number when you are trying to identify who answered the phone, that is one rule; and that which is stated in A. L. R. 135, page 332, as to the necessity for identifying the person called.

But where the telephone call is from an unknown number, and the person called answers and says who it is, any reply from the number from which the call comes would be pure hearsay.

Each of these phone calls you have permitted to go into evidence, and we have made this objection throughout. We feel circumstantial evidence that the

defendant received shipment of goods is certainly evidence he received it.

But we think it is mighty flimsy evidence——

The Court: Why would it be shipped? If a person testifies that the defendant called him and said, This is Hoffman, send me a certain number of crates of goods; the goods are shipped, and Hoffman received them. Why were they shipped? Did the person dream that all up? Or did Mr. Hoffman call them?

Mr. La Prade: I think that is one of the principal arguments. It goes to each count.

The Court: I don't see any merit. I don't want to hear any more about that.

Mr. La Prade: Referring to the scheme, your Honor, we feel the Government has wholly failed to show a criminal scheme.

When a man is in the wholesale distribution business, it refers to calls over the phone, particularly as shown today, the Brice Pickle man attached merchandise received from the Hayward Products Company, the preserves, and that, of course, can answer for the nonpayment of Mr. Hayward, for the reason Mr. Hoffman never got the merchandise, except for the 200 cases of Mr. Goodman. We feel it is just as easy to refer to all of these transactions as having been last-ditch efforts to survive the business world as it is of a criminal nature.

There is nothing shown that the defendant had a scheme and pursuant to the scheme he did these things. [400]

Assuming for the purpose of this argument that

there is sufficient evidence he did these things, there isn't any evidence that he didn't have any money in the bank. There isn't any evidence that he did. This testimony they brought out about a chair and a couple of tables, there isn't any need of evidence that he had a large establishment with many employees. There is nothing criminal about ordering merchandise over the phone direct, nothing criminal about buying merchandise and not being able to pay for it.

That is the whole substance of this case. This is a case where they are trying to use the federal court as a collection agency.

The Court: I have heard enough argument. I will deny your motion at this time.

The Court will stand at recess until 1:30.

(Thereupon the noon recess was taken.) [401]

September 21, 1956, 1:30 P.M.

The Court: You may continue.

Mr. Whitney: If the Court pleases, the defendant rests.

The Court: All right. Did you want to make a motion?

Mr. Whitney: Yes, your Honor.

The Court: The Jury may retire from the courtroom.

(The following proceedings were had out of the hearing and presence of the Jury.)

Mr. Whitney: Now, then, if the Court pleases, we again move the Court for an order dismissing the

indictment upon the grounds that in the indictment the scheme is shown to be on or about the 29th day of May, 1953, that that is the day advised, and that there is no allegation in the indictment that this is a continuing scheme, either up to the date of the indictment or up to the last mailing, or the last telephone conversation.

On that ground we move the indictment be dismissed.

The Court: All right. Motion denied. [402]

Mr. Whitney: Now, if the Court please, we move the Court to enter a judgment of acquittal on each and every count of the indictment, first, upon the grounds that there is no proof of the scheme as laid in the indictment, as there is no testimony, with the exception of two witnesses, that the defendant ever represented that he would pay promptly for the merchandise. There is no evidence that he stated that the companies had a good credit rating, and that the goods would be paid for promptly in full. Nor is there any evidence that represented these companies to be active and responsible business concerns.

And insofar as the counts referring to the Long Date Gardens, the letter which they said was a lulling letter, rather, the envelope containing the \$500 check was sent after the business was transacted, and no goods were ordered or sent after that date.

Now, that applies with reference to the telephone conversations to nearly all the other counts in the indictment, that there is no sufficient proof as to the identity of Hoffman.

As to the mailing, there is no proof of mailing, except as to Long's Date Gardens, and that the scheme as to her had at that time expired.

We think we should have a judgment of acquittal on each and every count of the indictment, and we reaffirm the [403] argument made on the original motion at the end of the Government's case.

The Court: The motion will be denied.

Call in the jury.

(Thereupon the following proceedings were had in the hearing and presence of the jury.)

The Court: You may argue the case.

(Thereupon Counsel for the Government and Counsel for the Defendant argued the case to the jury.)

The Court: The trial of this case will be resumed Monday afternoon at two o'clock. The Court will instruct you at that time.

In the meantime, you will not discuss the case among yourselves, or permit anyone to discuss it with you. Also avoid forming or expressing any opinion upon any subject connected with it. Keep that in mind.

You are excused until Monday at 2:00 o'clock.

(Thereupon an adjournment was taken to Monday, September 24, 1956, at 2:00 o'clock p.m.) [404]

September 24, 1956—2:00 P.M.

COURT'S INSTRUCTIONS TO THE JURY

* * *

You are instructed that the phrase "false and fraudulent pretenses, representations and promises" as charged in the indictment means untrue and false words and conduct which are calculated to deceive and to induce action which would not be taken if the truth were known by the person [409] deceived.

If you find beyond a reasonable doubt that the defendant did in fact order the products set forth in the indictment, I instruct you that this constituted a promise and representation that the defendant intended to pay for the products ordered, but for such representation and promise to be considered false you must further find beyond a reasonable doubt that the defendant at the time he ordered the goods had no intention of paying for the products ordered.

* * *

[Endorsed]: Filed December 3, 1956. [410]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO
RECORD ON APPEAL

United States of America,
District of Arizona—ss.

I, William H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby

certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of United States of America, Plaintiff, vs. Benjamin B. Hoffman, Defendant, numbered C-13999 Phoenix, on the docket of said Court.

I further certify that the attached and foregoing original documents bearing the endorsements of filing thereon are the original documents filed in said case, and that the attached and foregoing copies of minute entries are true and correct copies of the originals thereof remaining in my office in the city of Phoenix, State and District aforesaid.

I further certify that the said original documents, and said copies of minute entries, together with the original exhibits transmitted herewith, constitute the record on appeal in said case as designated in the Appellant's Designation filed therein and made a part of the record attached hereto and the same are as follows, to wit:

1. Indictment.
2. Defendant's Motion to Dismiss.
3. Minute Entry of November 28, 1955 (arraignment and plea).
4. Minute Entry of December 30, 1955 (order denying Motion to Dismiss).
5. Government's Bill of Particulars.
6. Minute Entry of September 21, 1956, of defendant's motions for judgment of acquittal and of orders denying the same.
7. Verdict.

8. Order Enlarging Time to file Motion for New Trial and Motion in Arrest of Judgment.
9. Defendant's Motion in Arrest of Judgment.
10. Defendant's Motion for New Trial.
11. Minute Entry of October 8, 1956 (orders denying motion in arrest of judgment and motion for new trial).
12. Judgment.
13. Defendant's Notice of Appeal.
14. Order Extending Defendant's Time to file record and docket appeal to and including December 20, 1956.
15. Designation of Contents of Record on Appeal.
16. Reporter's Transcript of Proceedings.

I further certify that the originals of Government's Exhibits 1, 2, 2a to 2m, 3, 3a, 3b, 4 to 8, 8a to 8t, 9, 10, 11, 11a, 12, 12a, 12b, 13 to 22, 22a, 22b, 22c, 23, 23a to 23d, 24, 25, 26, 26a to 26d, 27, 29 to 36, 36a to 36g, 37 to 41, 41a to 41d, 42, 43, 43a to 43c, and 44 to 58, in evidence; and Defendant's Exhibits A and B, in evidence, are transmitted herewith as a part of this record on appeal, as designated by appellant.

Witness my hand and the seal of said Court this 17th day of December, 1956.

[Seal] /s/ WM. H. LOVELESS,
Clerk.

[Endorsed]: No. 15391. United States Court of Appeals for the Ninth Circuit. Benjamin B. Hoffman, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Arizona.

Filed December 19, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15391

BENJAMIN B. HOFFMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S STATEMENT OF POINTS
ON WHICH HE INTENDS TO RELY

Comes Now appellant Benjamin B. Hoffman, through his attorneys undersigned, and herewith respectfully sets forth the following points upon which he intends to rely in the above-entitled case on appeal:

1. The indictment and each count thereof fails to state an offense against the United States.

2. Title 18, Section 1343, U.S.C.A., is unconstitutional, and appellant's conviction on Counts I, II, IV, V, VII, X and XI is null and void, for the reason that said statute is so vague, indefinite and uncertain that a person of common understanding would not understand same.

3. Failure of the District Court to direct a verdict of not guilty on each and every count of the indictment on which the appellant was convicted for the reason that the evidence was and is insufficient

upon which to base a verdict of guilty on each and all of the counts upon which appellant was convicted.

4. The admission, by the court below, of evidence oral and documentary over the objection that the proper foundation was not laid.

5. The admission, by the court below, of evidence oral and documentary over the objection that such evidence was irrelevant, incompetent and immaterial.

Respectfully submitted,

LOUIS B. WHITNEY,
LORETTA WHITNEY,
PAUL W. LA PRADE;

By /s/ LOUIS B. WHITNEY,
Attorneys for Appellant.

Service of copy acknowledged.

[Endorsed]: Filed December 29, 1956.

[Title of Court of Appeals and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the parties to the above-entitled action, acting through their respective attorneys, undersigned, that all original exhibits contained in the record on appeal in the

above-entitled proceeding may be considered by the above-entitled Court in their original form without reproduction in the printed record.

Dated this 27th day of December, 1956.

LOUIS B. WHITNEY,
LORETTA WHITNEY,
PAUL W. LA PRADE;

By /s/ LOUIS B. WHITNEY,
Attorneys for Defendant-Appellant, Benjamin B.
Hoffman.

JACK D. H. HAYS,
U. S. Attorney;

By /s/ WILLIAM E. EUBANK,
Ass't U. S. Attorney.

[Endorsed]: Filed December 29, 1956.

